IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

OPTIS WIRELESS TECHNOLOGY, LLC, OPTIS CELLULAR TECHNOLOGY, LLC, PANOPTIS PATENT MANAGEMENT, LLC, UNWIRED PLANET, LLC, UNWIRED PLANET INTERNATIONAL LIMITED, PLAINTIFFS,	)(	CIVIL ACTION NO. 2:19-CV-66-JRG
VS.	)(	
APPLE INC., DEFENDANTS.	)(	MARSHALL, TEXAS AUGUST 10, 2020 9:52 A.M.

TRANSCRIPT OF JURY TRIAL

ALL DAY

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Counsel, before we proceed any further, I'll ask if the parties are prepared to read into the record those items from the list of pre-admitted exhibits presented and published as a part of the trial on the preceding Friday in this case, which would have been, I believe, the 7th of August.

MS. SCHUETZ: Yes, Your Honor. Plaintiffs are prepared.

THE COURT: Let me hear from you at this time, please.

MS. SCHUETZ: Plaintiffs admitted the following list of exhibits: PX-1716, PX-1720, 1756, 1757, 1758, 1759, 1768, 1769, and PX-1883.

THE COURT: Is there an objection from the Defendants?

MR. SELWYN: No, Your Honor, we have some additional ones on behalf of Apple.

THE COURT: Let me hear the additional ones on behalf of the Defendant, please.

MR. SELWYN: I apologize in advance if I repeat some of the same based upon the way my list is ordered, and

09:57:05 it's -- it's a lengthy list. So I apologize for the time
09:57:07 it will require --
09:57:07 THE COURT: Better to list them twice than to
09:57:12 leave them out.
09:57:13 MR. SELWYN: Exactly, Your Honor.
09:57:14 PX-1756, PX-1757, PX-1758, PX-1759, PX-1883,
09:57:24 PX-2308, PX-1716, PX-1720, PX-1768, PX-1769, DTX-0319,
09:57:41 DTX-0340, DTX-1724, DTX-1746, PX-0120, PX-005, PX-0009,
09:57:57 PX-2822, DTX-0012, DTX-0024, DTX-0027, DTX-0071, DTX-0160,
09:58:13 DTX-0167, DTX-0191, DTX-0192, DTX-0194, DTX-0213, DTX-0256,
09:58:31 DTX-0296, DTX-0297, DTX-0403, DTX-0404, DTX-0416, DTX-0419,
09:58:48 DTX-0423, DTX-431, DTX-0432, DTX-0457, DTX-458, DTX-00 --
09:59:05 pardon me, DTX-0520, DTX-0521, DTX-0522, DTX-0523,
09:59:16 DTX-0593, DTX-0663, DTX-0671 --
09:59:20 THE COURT: Could you slow down a little bit,
09:59:22 Mr. Selwyn?
09:59:22 MR. SELWYN: Yes, sir.
09:59:24 DTX-0672, DTX-0782, DTX-0852, DTX-0853, DTX-0855,
09:59:36 DTX-0858, DTX-0859, DTX-0887, DTX-0898, DTX-0901, DTX-0917,
09:59:55 DTX-0918, DTX-0926, DTX-1063, DTX-1064, DTX-1066, DTX-1069,
10:00:11 DTX-1071, DTX-1072, DTX-1074, DTX-1075, DTX-1076, DTX-1077,
10:00:26 DTX-1078, DTX-1080, DTX-1082, DTX-1083, DTX-1898, DTX-1901,
10:00:42 DTX-1902, DTX -- pardon me, DTX-2018, DTX-2077, DTX-2083,
10:00:58 DTX-2106, DTX-2116, DTX-2120, DTX-2121, and last PX-0008.
10:01:09 THE COURT: Any objection to that rendition?

10:01:16 MS. SCHUETZ: No objection, Your Honor.

10:01:17 THE COURT: All right. Thank you, counsel.

10:01:19 Next we will proceed to take up -- the Court will proceed to take up motions by both parties or all parties regarding matters raised under Federal Rule of Civil Procedure 50(a).

10:01:30 As counsel will recall, last Friday, the Court instructed the parties to reduce their positions under Rule 50(a) to written motions to be filed not later than noon on Sunday. Those were filed. The Court's reviewed them, considered them, and, consequently, I'm prepared to take up the various competing motions under 50(a) between the parties at issue here at this time. Many of these are direct opposites of each other, which is typical.

10:02:07 The purpose of the Court ordering you to reduce your positions to writing so that I could review them in advance was to streamline the process this morning.

10:02:18 Based on what we discussed in chambers before the Court came on the bench this morning, I believe it's my understanding that both sides are agreed to submit their positions under Rule 50(a) on the papers that have been filed with perhaps one or two slight variations on that.

10:02:37 What is -- what is Plaintiffs' position with regard to how we should go forward on these matters raised under Rule 50(a) and briefed over the weekend?

10:02:46 MR. WELLS: Your Honor, Crawford Maclain Wells for
10:02:50 Plaintiffs.
10:02:50 Plaintiffs, as detailed in their papers on their
10:02:53 motions for judgment as a matter of law, and that's
10:02:57 Docket No. 478 and 480, rest on those papers but would like
10:03:02 brief argument on obviousness with regard to the '833, '774
10:03:09 and '284 patents.
10:03:10 THE COURT: All right. What's Defendant's
10:03:12 position on these matters?
10:03:16 MR. SELWYN: Your Honor, Apple is also prepared to
10:03:19 rest on its written submissions, although we'd like to
10:03:24 argue very briefly a point on Doctrine of Equivalents and
10:03:25 contributory infringement.
10:03:27 THE COURT: All right. And let me ask this of
10:03:31 both of you: Over the weekend, there were various
10:03:36 communications exchanged by email, and some of those were
10:03:42 forwarded to the Court.
10:03:43 My understanding, based on what I've seen over the
10:03:48 weekend, is that both sides now take the position that
10:03:51 anticipate -- anticipation is not in the case, should not
10:03:54 be charged to the jury, and I assume both sides are in
10:03:58 agreement that the Court should grant Plaintiffs' motion to
10:04:03 strike or delete anticipation as a defense of the Defendant
10:04:09 under Rule 50(a); is that correct?
10:04:11 MR. WELLS: Yes, Your Honor.

10:04:14 THE COURT: How about from Apple, Mr. Selwyn?
10:04:17 MR. SELWYN: It is correct, Your Honor.
10:04:18 THE COURT: All right. Then based on that and
10:04:20 without objection, the Court will grant judgment as a
10:04:24 matter of law that the defense of anticipation under
10:04:27 Section 102 is not an operative part of this case and will
10:04:32 not be submitted to the jury.
10:04:33 All right. Let me -- in light of what you've told
10:04:40 me, let me hear argument from Plaintiff first on the
10:04:44 obviousness issue that they care to hear -- or they care to
10:04:49 raise argument on. I'll hear a response from Apple, and
10:04:52 then I'll take up Apple's argument, as they've requested,
10:04:56 on contributory infringement and Doctrine of Equivalents.
10:04:59 Let me hear from Plaintiff first.
10:05:01 MR. WELLS: Thank you, Your Honor.
10:05:02 With regard to the '833 patent, the '284 patent,
10:05:05 and the '774 patent, this is not an issue where there is
10:05:10 insufficient evidence. This is an issue where there is no
10:05:14 evidence in the record whatsoever regarding a motivation to
10:05:18 combine references for the purpose of obviousness or a
10:05:23 motivation to modify those references.
10:05:26 There was no expert testimony whatsoever from
10:05:30 Dr. Buehrer on the '284 patent regarding combining
10:05:32 references and the motivation to do so, and Dr. Wells on
10:05:36 the '774 patent and the '833 patent regarding the same

subject. So it is a complete lack of proof.

And I would challenge that -- we've looked at the record. There's not any testimony whatsoever.

Now, on the '833 patent, Dr. Wells discussed the substance of his validity opinion at 827, 5 through 14. And if it's helpful to Your Honor, I actually have the pages in hard copy if you would like those. But otherwise if you would like to look at the electronic copy.

THE COURT: I've heard your argument. Let me hear Apple's response to it.

MR. SELWYN: Your Honor, Dr. Buehrer and Dr. Wells did present sufficient evidence for this to go to the jury on obviousness for all three.

They presented evidence regarding the similarity of the references. They explained how they were directed to similar problems. And they further described why they were directed towards similar problems.

A reasonable jury can infer from all of the evidence that was presented on those three patents that there is a motivation to combine, and for the reasons that were expressed by the experts, also a reasonable expectation of success in that combination as well.

The suggestion seems to be that some magic words were not stated by the experts, but they all presented underlying evidence from which, consistent with Your

10:07:05 Honor's instructions, the jury could infer both a
10:07:09 motivation to combine expectation of success as supported
10:07:14 by all the predicate testimony offered by Dr. Wells and
10:07:18 Dr. Buehrer on the '774, '284, and '833 patents.
10:07:22 THE COURT: All right.
10:07:23 MR. WELLS: May I respond quickly, Your Honor?
10:07:25 THE COURT: Briefly.
10:07:26 MR. WELLS: Dr. Wells's analysis on the '833
10:07:34 patent was a total of nine lines of testimony. He was
10:07:41 asked by Mr. Mueller: Have you considered Dr. Madisetti's
10:07:45 infringement theory at -- at each one of the claim
10:07:50 limitations?
10:07:50 His answer: Yes, I have.
10:07:52 What's your conclusion?
10:07:53 Dr. Madisetti's opinion where the row-by-row
10:07:56 doesn't need to be row-by-row then these four pieces of
10:07:58 prior art would render this -- this claim invalid.
10:08:01 That's it. That's his analysis. There's no
10:08:04 discussion of the content of the art or how to combine the
10:08:08 four references.
10:08:09 With regard to the '774 patent, there's two
10:08:12 references. He mentioned Hottinen in the second reference
10:08:16 and said that Hottinen had a gain, and this is at 816, 15
10:08:19 through 24. That's it. No discussion of how you would
10:08:23 combine these references whatsoever.

'284 patent, he's combining three references, and that's the transcript at 741, 15 through 18.

How do these two documents relate to your analysis requirements 1, 2, and 3?

These two documents together disclose all three elements 1, 2 and 3 --

THE COURT: Please slow down.

MR. WELLS: Sorry. As well as the preamble.

That's it.

THE COURT: Okay.

MR. WELLS: That's his in-depth discussion. No discussion of combinations.

THE COURT: Anything further from Defendant, Mr. Selwyn, on this issue?

MR. SELWYN: Your Honor, very briefly, because I believe that is an incomplete recitation of the evidence on these patents.

On the '833 patent, Dr. Wells testified at Page 826 about three of the four documents being Qualcomm documents, the other being a 3 -- 3GPP/Samsung technical document. Thus, all of them having a reason to combine.

There's also a reason to combine those references because they're all about LTE, from which the jury can easily infer from the base of the references.

On the '284 patents, the obviousness combination

10:09:30 was based upon DTX-0102 and 0106, which are both early
10:09:37 versions of the specifications of the LTE standards.
10:09:41 And the third reference in the combination is a
10:09:44 Samsung Tdoc.
10:09:45 So all three references are proposals or adopted
10:09:48 proposals for cellular standards derived from the very same
10:09:52 process as the LTE standard, again, supporting a reason for
10:09:57 motivation to combine, which the jury could easily infer.
10:10:01 And the last with respect to the '774 patent, both
10:10:05 Murakami and Hottinen could be combined based on the face
10:10:08 of the references and the testimony of Dr. Buehrer who
10:10:11 explain that both relate to multi-antenna cellular
10:10:15 communication and on Dr. Mahon's testimony that they both
10:10:19 relate to CDMA.
10:10:19 THE COURT: All right. I've heard enough argument
10:10:22 on this, counsel.
10:10:24 Let's move to Defendant's request to present
10:10:27 targeted argument regarding contributory infringement and
10:10:30 Doctrine of Equivalents.
10:10:30 Mr. Selwyn, let me hear from you, please.
10:10:34 MR. SELWYN: Thank you.
10:10:35 Your Honor, first, with respect to Doctrine of
10:10:36 Equivalents, Plaintiffs didn't offer any DOE opinion for
10:10:40 the '284 patent, Claims 1, 14, and 27, or for the '833
10:10:45 patent, Claim 8, or for the '332 patent, Claim 6 or 7.

10:10:52 And in view of the absence of any evidence or
10:10:55 suggestion or theory under the Doctrine of Equivalents,
10:10:58 Apple is entitled to judgment of no infringement under the
10:11:02 DOE for those claims.
10:11:03 With respect to Claim 6 of the '774 patent and
10:11:08 Claims 1 and 10 of the '557 patent, the testimony offered
10:11:12 by the Plaintiffs was entirely conclusory from -- and
10:11:20 insufficient to support infringement under the Doctrine of
10:11:22 Equivalents.
10:11:23 Dr. Wells and Mr. Lanning both explained why that
10:11:25 evidence doesn't support the arguments, and, therefore,
10:11:28 Apple is also entitled to judgment of no infringement for
10:11:31 those claims.
10:11:32 With respect to contributory infringement, as an
10:11:35 initial matter, the Plaintiffs didn't present sufficient
10:11:38 evidence to prove contributory evidence -- contributory
10:11:42 infringement because they didn't prove direct infringement
10:11:44 of any asserted claim, but, moreover, they also failed to
10:11:48 present any evidence that the chipset issue in the accused
10:11:52 products have no substantial infringing use or that Apple
10:11:55 knew that the combination for which its components were
10:11:59 especially made were both patented and infringing as
10:12:02 Section 271(c) require.
10:12:04 THE COURT: All right. Let me hear a response
10:12:08 from Plaintiff.

10:12:09 MR. WELLS: Thank you, Your Honor.

10:12:14 I'll take the easier issue up first, contributory
10:12:17 infringement.

10:12:17 The parties haven't suggested a jury instruction
10:12:20 on this issue. So this is not an issue that's going to go
10:12:24 to the -- the jury. And the parties, I believe, are agreed
10:12:26 on that.

10:12:28 THE COURT: All right. What about on the Doctrine
10:12:30 of Equivalents?

10:12:31 MR. WELLS: Dr. Mahon and Dr. Madisetti both
10:12:33 presented their DOE opinions regarding the '557 and '774
10:12:38 patents, respectively. And Dr. Mahon also -- Mahon, sorry,
10:12:42 also provided his opinions regarding the '284 patent
10:12:45 equivalence under the mean-plus-function claim.

10:12:49 We have dueling experts on this issue. They have
10:12:52 different opinions. It's not a basis for judgment as a
10:12:54 matter of law on those issues.

10:12:56 THE COURT: All right. Thank you.

10:12:57 Let me also ask for some clarification on one of
10:13:02 the issues, counsel, that I didn't raise earlier. There
10:13:07 seems to be part of the Plaintiffs' moving papers under
10:13:12 Rule 50(a) addressed to the topic of patent exhaustion.
10:13:15 And there seems to be a dispute between the parties as to
10:13:19 whether this is an issue for the jury trial or the bench
10:13:21 trial that will follow.

10:13:22 The pre-trial order in the case seems to indicate
10:13:26 it's a bench trial issue. But Plaintiff seems to feel
10:13:31 compelled to move on it under Rule 50(a), which would only
10:13:35 relate to matters fully heard before the jury regarding the
10:13:41 '774 patent, I believe.
10:13:43 What is the part -- what are the parties'
10:13:46 positions with regard to the exhaustion issue?
10:13:48 MR. WELLS: May I approach the podium?
10:13:51 THE COURT: Please, Mr. Wells.
10:13:52 MR. WELLS: Your Honor, Defendant was required to
10:14:00 present evidence of exhaustion in its case-in-chief per the
10:14:05 Court's rulings on the pre-trial proceedings at the
10:14:08 pre-trial conference.
10:14:09 The Court stated: I do not intend to have a
10:14:12 separate evidence -- to have separate evidence produced
10:14:15 during the bench trial that's not produced at the jury
10:14:17 trial. The witnesses are going to be -- put up the
10:14:19 entirety of the evidence during the jury portion of the
10:14:22 trial, with the exception of the equitable issue -- issues
10:14:25 regarding FRAND and the late disclosure to ETSI, which
10:14:29 would go to the bench only.
10:14:32 Exhaustion evidence was supposed to be put forward
10:14:34 here, and then any issues addressed later. There is no
10:14:37 evidence in the record of the exhaustion issue.
10:14:40 THE COURT: What's Apple's posture on this,

10:14:43 Mr. Selwyn?

10:14:44 MR. SELWYN: Your Honor, as you'll recall, Apple moved for summary judgment on its patent exhaustion defense. That was denied. We maintain all the positions that were stated in our summary judgment motion for purposes of appeal. That is our position.

10:15:07 THE COURT: All right. Well, with regard to the motions urged by both Plaintiffs and Defendant under Federal Rule of Civil Procedure 50(a), I remind the parties of the language of the rule itself, which states: If a party has been fully heard on an issue during a jury trial and the Court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the Court may grant a motion for judgment as a matter of law.

10:16:07 You'll note that the rule does not say the Court shall grant a motion for judgment as a matter of law.

10:16:14 But, in my view, having read your briefing, having heard your argument, I will grant Plaintiffs' motion, without objection from Defendant, that any defense of anticipation under Section 102 is not a part of this case and is not an operative defense for Apple.

10:16:35 With regard to the various other matters urged under Rule 50(a) by both Plaintiff and Defendant, which would include the obviousness issues that we heard argument

10:16:47 on, there is a motion for judgment as a matter of law by
10:16:52 Plaintiff regarding Section 101 as to the '332 patent.
10:16:58 I've heard the parties' positions on exhaustion
10:17:02 regarding the '774.
10:17:03 The Plaintiff has moved for judgment as a matter
10:17:05 of law on all claims asserted under all patents-in-suit
10:17:11 that infringement has been established as a matter of law.
10:17:14 Consequently, and correspondingly, Defendants
10:17:17 moved for just the opposite, that there's been an
10:17:21 establishment as -- should be judgment as a matter of law
10:17:24 establishing that there's no infringement on any claims of
10:17:27 any of the patents-in-suit.
10:17:31 Plaintiff has moved for judgment as a matter of
10:17:33 law that infringement by the Defendant is willful.
10:17:37 Defendant has moved correspondingly that any
10:17:42 infringement would not be willful as a matter of law.
10:17:46 Plaintiff has moved for judgment as a matter of
10:17:48 law on the damages issue, establishing its damages request
10:17:54 to the jury of $506 million as a matter of law.
10:17:59 Defendant has moved that there are no damages that
10:18:01 should be awarded, in corresponding oppositeness to the
10:18:09 Plaintiffs' position.
10:18:13 We've heard argument on contributory and --
10:18:15 contributory infringement and DOE. Defendants also moved
10:18:19 for judgment as a matter of law on induced infringement and

10:18:21 direct infringement. I've mentioned its position on
10:18:26 willfulness and damages.
10:18:30 Defendant's moved that all the patents-in-suit are
10:18:33 invalid as a matter of law under Rule 50(a), and Defendant
10:18:38 has moved for judgment as a matter of law under Rule 50(a)
10:18:42 regarding no pre-suit damages concerning particularly the
10:18:48 actual notice issue related to the correspondence that's
10:18:53 been presented to the jury, the Innography evidence, and
10:18:58 the ETSI evidence.
10:18:59 I believe those are all the matters raised by the
10:19:02 respective parties in the briefing filed over the weekend.
10:19:06 Having heard your arguments, I'll grant judgment as a
10:19:10 matter of law on the anticipation issue, as I've mentioned.
10:19:13 All other matters urged by both Plaintiffs and
10:19:17 Defendant seeking judgment as a matter of law under 50 --
10:19:21 under Rule 50(a) are denied.
10:19:22 All right. Counsel, it's 20 minutes after 10:00.
10:19:28 I'm going to take a short recess, and at 20 minutes until
10:19:37 11:00 -- 20 minutes from now, I'd like to meet with counsel
10:19:42 in chambers.
10:19:43 And it's my intention, then, to conduct an
10:19:47 informal charge conference discussing the parties' latest
10:19:50 joint submission regarding the final jury instructions and
10:19:52 the verdict form. I intend to hear fully and informally
10:19:57 from all parties.

10:20:02 All counsel involved are invited -- if you've made an appearance in the case, you're invited to participate.

10:20:12 As I noted earlier, lead counsel that will be presenting closing arguments are not required to be present. And it's my understanding that neither Mr. Sheasby nor Mr. Mueller will be present for the informal charge conference, but everyone else who has appeared in the case is certainly welcome and invited to be included in the process.

10:20:29 I will see those of you participating in the informal charge conference in chambers at 20 minutes until 11:00.

10:20:39 Until then, the Court stands in recess.

10:20:41 COURT SECURITY OFFICER: All rise.

10:21:05 (Recess.)

10:21:06 (Jury out.)

10:21:06 COURT SECURITY OFFICER: All rise.

10:21:07 THE COURT: Be seated, please.

02:07:00 As mentioned on the record after we completed argument and action by the Court on motions under Rule 50(a), I have subsequently conducted an informal charge conference with counsel in chambers where we have thoroughly reviewed the parties' previous submissions regarding the final jury instructions and verdict form.

02:07:37 There's been a free-flowing exchange of thoughts,

02:07:40 ideas, and information, both with questions from the Court
02:07:44 and questions and comments from the parties.
02:07:48 And from that informal charge conference and with
02:07:53 the benefit of what was explained and shared and discussed
02:07:56 therein, the Court has generated what it now believes to be
02:08:00 the appropriate final jury instructions and the appropriate
02:08:04 verdict form to submit in this case.
02:08:08 It's now my intention to conduct a formal charge
02:08:12 conference on the record and review with the parties any
02:08:14 matters where they have objections with the final jury
02:08:19 instructions and verdict form as I have delivered it to
02:08:23 them.
02:08:23 And I'll note that I've delivered it to them with
02:08:28 an opportunity to review it and consider it in light of any
02:08:32 changes that may have been made since we concluded the
02:08:34 informal charge conference.
02:08:35 Counsel, my practice and what I would like in this
02:08:39 case is to have one representative of both Plaintiffs and
02:08:42 Defendant go to the podium, remain at the podium. And I
02:08:46 intend to go through, first, the final jury instructions
02:08:49 page-by-page, and then the verdict form page-by-page.
02:08:53 And at any place in that process where you believe
02:08:59 an objection should be made both as to something that has
02:09:04 been included or something that has been omitted, I'll be
02:09:07 happy to hear from you at that juncture.

But doing this beginning at the first page and going to the last page is my way of making sure I don't overlook or fail to consider anything that might be appropriately raised as part of this formal charge conference.

So, with that, if I could have Plaintiffs' spokesperson and Defendant's spokesperson go to the podium, please, Ms. Glasser and Mr. Selwyn. And we'll begin with the final jury instructions.

Is there any objection from either party to anything set forth on the first page, being the cover page of the final jury instructions?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No, Your Honor.

THE COURT: Turning then to Page 2 of the final jury instructions, is there objection here from either Plaintiff or Defendant?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No, Your Honor.

THE COURT: Turning to Page 3, is there objection from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No.

THE COURT: Next is Page 4. Is there objection from either party?

02:10:09 MS. GLASSER: No, Your Honor.
02:10:10 MR. SELWYN: None, Your Honor.
02:10:11 THE COURT: Page 5, is there objection from either
02:10:15 party?
02:10:17 MS. GLASSER: No, Your Honor.
02:10:18 MR. SELWYN: No objection, Your Honor.
02:10:20 THE COURT: Next is Page 6. Is there objection
02:10:23 from either party?
02:10:24 MS. GLASSER: No, Your Honor.
02:10:26 MR. SELWYN: No objection, Your Honor.
02:10:28 THE COURT: Turning then to Page 7, is there
02:10:30 objection from either Plaintiffs or Defendant?
02:10:32 MS. GLASSER: No, Your Honor.
02:10:33 MR. SELWYN: Your Honor, no specific objection.
02:10:36 We would just note --
02:10:37 THE COURT: You'll need to speak up, Mr. Selwyn,
02:10:41 or pull the microphone a little closer.
02:10:43 MR. SELWYN: Pardon me, Your Honor. We have
02:10:45 nothing specific on this page. We would note an objection
02:10:47 to the Court not instructing the jury separately on method
02:10:51 versus apparatus claims, as Apple had proposed in its
02:10:56 instructions 10, 14, 17, and 18, for example.
02:10:58 THE COURT: All right. That objection is
02:10:59 overruled.
02:11:00 Is there anything further on Page 7?

If not, I'll turn to Page 8.

Is there objection here from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No, Your Honor.

THE COURT: Next is Page 9.

Is there objection from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection, Your Honor.

THE COURT: Next is Page 10.

Is there objection from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: Yes, Your Honor. Apple objects to the sentence that reads: However, that does not mean that every word of the claim must exist identically in the accused products.

Apple suggests that is not a correct statement of law and references, for example, Lemelson against United States, U.S. 7 -- 752 F.2d 1538; Laitram against Rexnord, 939 F.2d 1533; and Biodex against Loredan, 946 F.2d 850.

THE COURT: Mr. Selwyn, I'm not able to hear all the detail of what you're saying. I don't want the two of you to be unacceptably close to each other. It may be that when one of you needs to speak, the other one should step aside and let the one who's speaking have unfetterred access to the microphone.

But given where you are and the softness of your voice, I'm concerned that what you're saying is not coming through in the record.

MR. SELWYN: I will try to speak up, Your Honor. Would you like me to repeat what I just said?

THE COURT: Please, just for completeness, please reurge your objection.

MR. SELWYN: Certainly. With respect to Page 10 of the instructions, Apple objects to the sentence that reads: However, that does not mean that every word of the claim must exist identically in the accused products.

Apple respectfully suggests that's not a correct statement of the law and refers, for example, to the Federal Circuit's decisions in Lemelson, 752 F.2d 1538; Laitram, 939 F.2d 1533; and Biodex, 946 F.2d 850.

THE COURT: All right. That objection is overruled.

Is there anything further from either party on Page 10?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No, Your Honor.

THE COURT: Turning then, counsel, to Page 11 of the final jury instructions, is there objection here from either party?

MS. GLASSER: No, Your Honor.

02:13:25 MR. SELWYN: None, Your Honor.
02:13:26 THE COURT: Next is Page 12, is there objection
02:13:29 from either party?
02:13:30 MS. GLASSER: None, Your Honor.
02:13:32 MR. SELWYN: No objection, Your Honor.
02:13:33 THE COURT: Next is Page 13, is there objection
02:13:36 from either party?
02:13:38 MS. GLASSER: Your Honor, there's a suggestion on
02:13:40 the term "might" at the bottom of the page at Page -- the
02:13:43 second to last line to change the word "might" to "would"
02:13:46 to avoid the suggestion that it would be optional to find
02:13:51 infringement if the -- substantially the same
02:13:55 function-way-result test was found to be met.
02:13:59 THE COURT: All right. That objection is
02:14:01 overruled.
02:14:01 Anything further on Page 13?
02:14:03 MR. SELWYN: Nothing, Your Honor.
02:14:05 THE COURT: Turning then to Page 14 of the final
02:14:08 jury instructions, is there objection here from either
02:14:10 party?
02:14:11 MS. GLASSER: No, Your Honor.
02:14:12 MR. SELWYN: No objection.
02:14:14 THE COURT: Next is Page 15.
02:14:16 Any objection?
02:14:19 MR. SELWYN: No objection, Your Honor.

02:14:21 MS. GLASSER: No, Your Honor.

02:14:21 THE COURT: Next is Page 16.

02:14:24 Any objection?

02:14:27 MS. GLASSER: No, Your Honor.

02:14:28 MR. SELWYN: Your Honor, on Page 16, Apple objects to the lack of inclusion of its proposed instruction, and in particular the language that Apple had proposed, reading:

02:14:45 To determine whether Apple acted willfully, consider all facts. These may include, but are not limited to, whether or not Apple acted consistently with the standards of behavior for its industry, whether or not Apple reasonably believed it did not infringe or that the patent was invalid, whether or not Apple made a good faith effort to avoid infringing Plaintiffs' asserted patents, for example, whether Apple attempted to design around Plaintiffs' asserted patents, and whether or not Apple tried to cover up its infringement.

02:15:18 THE COURT: All right. That objection is overruled.

02:15:19 Anything further here before we move on?

02:15:22 MS. GLASSER: No, Your Honor.

02:15:23 MR. SELWYN: No, Your Honor.

02:15:24 THE COURT: Then let's turn next to Page 17 of the final jury instructions.

Is there objection from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection, Your Honor.

THE COURT: Next is Page 18.

Is there objection?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection, Your Honor.

THE COURT: Next is Page 19.

Is there objection from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection, Your Honor.

THE COURT: Next is Page 20, is there objection from either party?

MS. GLASSER: Yes, Your Honor.

Six lines from the bottom of the page, the instruction states: You must then consider the proper amount of damages, comma, if any, to award to Optis.

Plaintiffs request that "if any" be removed since upon a finding that at least one valid claim has been infringed, Section 284 requires at least a reasonable royalty to be awarded.

THE COURT: That's overruled.

Anything further on Page 20?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No, Your Honor.

02:16:34 THE COURT: Turning then to Page 21, is there
02:16:38 objection here from either party?
02:16:41 MS. GLASSER: Your Honor, there is not a specific
02:16:42 objection to this alone.
02:16:46 However, in conjunction with the verdict form,
02:16:52 Plaintiffs object to the description here of the way in
02:16:55 which the evidence was presented on lump sum and running
02:17:00 royalties because it -- we believe that on the verdict
02:17:01 form, it would not be appropriate for the jury to select
02:17:06 lump sum on the basis of the evidence that came in the
02:17:09 record, which from both parties was based on a fee paid per
02:17:15 unit. There is not a basis in the record for the jury to
02:17:19 properly select that lump sum option on the verdict form.
02:17:22 THE COURT: All right. That objection is
02:17:23 overruled.
02:17:23 Anything further on Page 21?
02:17:27 MR. SELWYN: On Page 21, Your Honor, Apple
02:17:29 believes that there should be an instruction added two
02:17:35 sentences up from the bottom that should indicate that no
02:17:39 damages may be awarded prior to at the earliest -- the
02:17:46 filing of the -- the service of the complaint because there
02:17:49 was no evidence presented of any damages before that period
02:17:52 of time.
02:17:55 THE COURT: That objection is overruled.
02:17:57 Anything further?

MS. GLASSER: No, Your Honor.

THE COURT: Then let's turn to Page 22 of the proposed final -- of the final jury instructions.

Is there objection from either party?

MS. GLASSER: Plaintiffs note for the record the same objection on the fully paid-up lump sum royalty that was stated previously.

THE COURT: Objection is noted and overruled.

Anything from Defendant on Page 22?

MS. GLASSER: And I apologize, Your Honor, there was an additional one, as well, at the bottom of the page.

A request that in -- before listing out the Georgia-Pacific factors, given that the parties referred to them as the Georgia-Pacific factors through trial, we would respectfully request that the Court clarify that the listed factors are the ones that were referred during the trial to the -- referred to during the trial as the Georgia-Pacific factors.

THE COURT: All right. That objection is overruled.

Anything further on Page 22?

MR. SELWYN: Nothing for Apple, Your Honor.

THE COURT: Anything further for Plaintiff, Ms. Glasser?

MS. GLASSER: No, Your Honor.

02:19:11 THE COURT: Then let's turn to Page 23 -- well, 23 is the remainder of the factors.

02:19:18 Is there any objection on Page 23?

02:19:21 MS. GLASSER: Not other than the one previously stated, Your Honor.

02:19:25 MR. SELWYN: Your Honor, Apple objects to the Court giving an instruction on the commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory, in the same line of business or whether they are inventor and promoter. Apple does not believe that should be given.

02:19:51 THE COURT: Mr. Selwyn, I've, as you can see, removed what otherwise would be the numbers from the 15 Georgia-Pacific factors since I am charging, at the parties' request, on less than all of the Georgia-Pacific factors.

02:20:11 Can you refresh my recollection as to which numbered factor this would otherwise be?

02:20:19 MR. SELWYN: Factor 5, Your Honor, with a little help from my colleague.

02:20:24 THE COURT: I remember Factor 4 and Factor 6. I don't remember any discussion of Factor 5. Have you raised an objection prior to this moment as to Factor 5?

02:20:34 MR. SELWYN: Your Honor, I believe we did in our written submission, Docket No. --

THE COURT: Did you raise an objection in the informal charge conference where we met for an hour or so to review all these various matters?

MR. SELWYN: May I have one moment, Your Honor?

Your Honor, I don't believe that we discussed or raised it in the informal charge conference. The reason for us putting it on the record now is in the event that this matter were, I believe, tried with respect to the FRAND issue.

THE COURT: All right. I'm going to overrule Defendant's objection in this regard on Page 23.

Is there anything further from either party on Page 23?

MS. GLASSER: No, Your Honor.

THE COURT: Mr. Selwyn?

MR. SELWYN: Nothing further on Page 23.

THE COURT: Then let's turn to Page 24 of the final jury instructions.

Is there objection here from either party?

MS. GLASSER: Yes, Your Honor. Plaintiffs object to the language discussing the two special apportionment issues and listing out the first and second, on the ground that they improperly suggest that an additional level of apportionment should be performed beyond that already incorporated within the Georgia-Pacific analysis and the

underlying discussion of directing the value to the patented benefits.

THE COURT: All right. That objection is overruled.

Anything further on Page 24?

MR. SELWYN: Your Honor, may I have one moment?

Your Honor, two objections with respect to Page 24.

One is on the sentence at the top of the page: Now no one of these factors is dispositive, and you can and should consider the evidence that has been presented to you in this case on each of these factors.

Apple objects to the extent that there are factors listed on which Mr. Kennedy has not provided any -- any evidence.

And on the bottom of the page, right before the last paragraph, Apple requests inclusion of the remainder of its apportionment instruction with respect to the smallest salable patent practicing unit.

THE COURT: All right. Well, with regard to Apple's objection as to the remainder of its proposed instruction as to the smallest practicing -- SSPPU, that's overruled.

As regards the sentence at the top of Page 24 regarding the Georgia-Pacific factors, Mr. Selwyn, I

02:24:05 deleted every Georgia-Pacific -- factor that the Defendants
02:24:10 raised an objection to in the informal charge conference
02:24:14 except No. 5, which you didn't object to in the informal
02:24:18 charge conference.
02:24:18 Are you telling me that there are factors here
02:24:20 that you objected to in the informal charge conference that
02:24:25 for some reason have survived and are in this document?
02:24:28 Because it was my intention to delete each of the factors
02:24:32 that the Defendant objected to.
02:24:35 MR. SELWYN: Correct, Your Honor. I'm not
02:24:36 suggesting that.
02:24:37 THE COURT: Okay. Well, whatever you are
02:24:39 suggesting is overruled.
02:24:40 All right. Next is Page 25.
02:24:42 Is there objection here from either party?
02:24:44 MS. GLASSER: No, Your Honor.
02:24:45 MR. SELWYN: No, Your Honor.
02:24:46 THE COURT: All right. Turning to the next page,
02:24:52 Page 26, is there objection here from either party?
02:24:54 MS. GLASSER: No, Your Honor.
02:24:57 MR. SELWYN: No objection, Your Honor.
02:24:58 THE COURT: Turning to the final page of the final
02:25:00 jury instructions, is there objection from either party?
02:25:02 MS. GLASSER: No, Your Honor.
02:25:04 MR. SELWYN: No objection, Your Honor.

02:25:05 THE COURT: All right. Counsel, let's turn then, next, to the verdict form. This has followed the same path from your last joint submission through discussion in the informal charge conference to generation of what you have before you, and we will address this in the same manner as we did the final jury instructions.

With regard to the cover page or the first page of the verdict form, is there objection here from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection, Your Honor.

THE COURT: Turning to Page 2, which has certain instructions and identifying information listed on it, is there objection here from either party?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection.

THE COURT: Page 3, which includes instructions to the -- to the jury, are there objections to anything on Page 3?

MS. GLASSER: No, Your Honor.

MR. SELWYN: No objection.

THE COURT: Turning to Page 4 of the verdict form where Question 1 is located, is there objection here from either party?

MS. GLASSER: I'll just state for the record the

02:26:05 objection raised in chambers regarding the instruction to
02:26:08 bypass the validity question if a finding of
02:26:12 non-infringement is entered.
02:26:14 THE COURT: All right. That's overruled.
02:26:16 Is there objection here from the Defendant?
02:26:18 MR. SELWYN: Yes. For the record, Your Honor
02:26:20 Apple objects to Question 1 because it does not break out
02:26:24 infringement by patent or by literal infringement and
02:26:27 infringement under the Doctrine of Equivalents.
02:26:29 THE COURT: That's overruled.
02:26:30 I'll turn next to Page 5 where Question 2 to the
02:26:35 jury is located.
02:26:37 Is there objection here from either party?
02:26:39 MS. GLASSER: No, Your Honor.
02:26:40 MR. SELWYN: No objection, Your Honor.
02:26:44 THE COURT: Turning then to Page 6 where
02:26:48 Question 3 to the jury is located, is there objection here
02:26:52 from either party?
02:26:53 MS. GLASSER: No, Your Honor.
02:26:56 MR. SELWYN: Your Honor, for the record, Apple
02:26:58 objects to Question No. 3, essentially for the same reason
02:27:01 as Question 1 -- that is, it does not break out willful
02:27:06 infringement by patent or by literal infringement and
02:27:10 infringement under the Doctrine of Equivalents.
02:27:11 THE COURT: That's overruled.

02:27:13 Turning next to Page 7 where Question 4A is
02:27:18 located, is there objection here?
02:27:20 MS. GLASSER: No, Your Honor.
02:27:27 MR. SELWYN: Your Honor, Apple objects to
02:27:29 Question 4 because it does not break out the amount of
02:27:33 damages by patent.
02:27:36 THE COURT: All right. Then we'll turn from
02:27:39 Page 7 to Page 8 where Question 4B, being the last question
02:27:43 in the verdict form, is located.
02:27:45 Is there objection here from either Plaintiffs or
02:27:48 Defendant?
02:27:49 MS. GLASSER: Yes, Your Honor. As mentioned
02:27:52 previously, Plaintiffs object on the ground that the only
02:27:54 evidence put into the record from either side was based on
02:27:59 a fee paid per unit. And, moreover, that future units are
02:28:03 not part of the present trial by the infringement case
02:28:09 extended here only to units sold up through the date of
02:28:14 trial and the acts of infringement through the date of
02:28:16 trial.
02:28:16 On those bases, Plaintiffs' position is that there
02:28:19 is no basis in the record for the jury to enter a lump-sum
02:28:24 checkmark there. And, furthermore, that the inclusion of
02:28:27 that option, coupled with the jury instructions, could
02:28:30 confuse and mislead the jury.
02:28:32 THE COURT: All right. Plaintiffs' objection to

02:28:36 Question 4B on Page 8 of the verdict form is overruled.

02:28:39 Any objection here from the Defendants?

02:28:42 MR. SELWYN: Apple has no objection to

02:28:45 Question 4B.

02:28:45 THE COURT: We'll turn then to Page 9, which is

02:28:48 the final page of the verdict form. Is there objection

02:28:51 here from either party?

02:28:52 MS. GLASSER: No, Your Honor.

02:28:53 MR. SELWYN: No, Your Honor.

02:28:56 THE COURT: All right. That will complete the

02:28:58 formal charge conference.

02:29:00 Counsel, I don't think there will be any changes

02:29:02 needed to these documents, based on what we've just

02:29:05 completed.

02:29:06 I need to print a couple copies for each side to

02:29:09 have in their possession before I bring in the jury and

02:29:14 start with the final jury instructions.

02:29:16 And I will do that and return to the bench

02:29:20 shortly.

02:29:22 Are there any other issues or any questions that

02:29:26 either Plaintiff or Defendant have that they would like to

02:29:29 raise at this point before I make these final copies and

02:29:32 then proceed to begin the Court's final jury instructions?

02:29:36 MS. GLASSER: Not with respect to the jury

02:29:37 instructions and verdict form.

I did just want to confirm for the record, our understanding is that the Plaintiffs will permit the confidential information that is included in the slides that were pre-exchanged to be shown during closing without sealing the courtroom.

But given the importance of the issue and the protective order, I wanted to get that on the record and -- and make sure that that -- that there was no issue with that.

THE COURT: Well, the parties have met and conferred. Lead counsel who are going to present closing arguments have met and conferred as to what to expect from each other. I spent a considerable amount of time early this morning going through disputed demonstrative slides for counsels's closing arguments.

With all of that, there should be no question at this point as to whether the Court will or will not need to seal the courtroom during final arguments from the parties.

Does either Plaintiff or Defendant wish to seal the courtroom during closing arguments?

MR. MUELLER: No, Your Honor.

THE COURT: Mr. Sheasby?

MR. SHEASBY: No, Your Honor.

THE COURT: Okay. All right. With that, I'll -- the Court stands in recess briefly. I'll be back shortly.

COURT SECURITY OFFICER: All rise.

(Recess.)

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Mr. Sheasby?

MR. SHEASBY: I have a request, Your Honor, if I may. If I could have a time call at -- at certain points in time.

THE COURT: I'll -- I'll ask for that in just a second. I'll be happy to do my best to give you whatever warnings you ask for, and the same for Mr. Mueller.

I want to briefly address everybody in the courtroom, especially those in the gallery. I know most of you here are aligned with one of these parties in one fashion or another. There may be some of you in the gallery who are not affiliated in any way with either party.

But regardless of that, I want you to understand that the Court considers its final instructions to the jury and counsels' final arguments as the most serious part of an inherently serious process.

Consequently, I don't want any disruptions once I bring the jury in. I don't want to see people getting up and leaving and hearing the door shut. I don't want to

hear people whispering back and forth. I don't want to hear papers being rustled. I certainly don't want to hear any electronic devices making noises.

So if any of that is not compatible with who you are, then you need to exit the courtroom right now, because once I bring the jury in, I expect this to be serious, quiet, and respectful in all possible ways.

Any questions from counsel before we proceed?

MR. MUELLER: No, Your Honor.

THE COURT: Both of you have 45 minutes to present your final arguments. And as I get to the point where I call upon you to present your closing arguments, I'll ask you for what time warnings you might want.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: All right. Let's bring in the jury, please.

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Welcome back, ladies and gentlemen of the jury. Please have a seat.

I know you've been here since 10:30 this morning. You remember I told you on Friday, it's an art and not a science. I apologize for the length of time it's taken us to get to this point, but we are at this point ready for me to give you my final instructions and what's often called

the Court's charge to the jury.

Ladies and gentlemen of the jury, you've now heard all the evidence in this case, and I'll now instruct you on the law that you must apply.

Now, each of you are going to have your own printed or written copy of these final jury instructions when you retire to the jury room to deliberate in a few moments.

You are welcome to take notes, if you like, but I want you to know you will have your own written copy of these instructions to review when you retire to the jury room.

It's your duty to follow the law as I give it to you. On the other hand, ladies and gentlemen, as I've previously said, you, the jury, are the sole judges of the facts in this case.

Do not consider any statement that I have made over the course of the trial or that I make during these instructions as an indication to you that I have any opinion about the facts in this case.

You're about to hear closing arguments from the attorneys. Statements and arguments of the attorneys, I remind you, are not evidence. And they are not instructions on the law. They're intended only to assist the jury in understanding the evidence and the parties'

competing contentions.

A verdict form has been prepared for you. And you will take this verdict form with you to the jury room. And when you have reached a unanimous decision or agreement as to the verdict, you'll have -- you'll have your foreperson fill in the blanks in the verdict form reflecting those unanimous agreements, sign it, date it, and then deliver it to the Court Security Officer.

Answer each question in the verdict form from the facts as you find them to be. Do not decide who you think should win this case and then answer the questions to reach that result. Again, your answers and your verdict in this case, ladies and gentlemen, must be unanimous.

In determining whether any fact has been proven in this case, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them. And you may consider the effect of all the exhibits received and admitted into evidence, regardless of who may have presented or produced them.

You, the jurors, are the sole judges of the credibility of each and every witness and the weight and effect to be given to all the evidence in this case.

Now, during the course of the trial, you may have been shown documents with some portions of those documents redacted. In those situations, you should not speculate

about what may have been redacted or why it was redacted. Those redactions, ladies and gentlemen, were approved by the Court prior to when the trial began.

As I've previously told you, the attorneys in this case are acting as advocates for their competing parties and their competing claims, and they have a duty to object when they believe evidence is offered that should not be admitted under the rules of the Court.

In that case, when the Court has sustained an objection to a question addressed to a witness, you are to disregard the question entirely, and you may not draw any inferences from its wording or speculate about what the witness would have said if I had permitted them to answer that question.

However, on the other hand, if I sustain -- excuse me, if I overruled an objection to a question addressed to a witness, then you're to treat the answer to the question and the question itself just as if no objection had been made -- that is, like any other question and answer during the trial.

Now, at times during the trial, ladies and gentlemen, it was necessary for the Court to talk to the lawyers outside of your hearing and your presence. This happens during trials because there are things that sometimes come up that do not involve the jury.

You should not speculate, ladies and gentlemen, about what was said during these discussions that took place outside your presence.

Now, there are two types of evidence that you may consider in properly finding the truth as to the facts in this case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect, or sometimes called circumstantial evidence. That is the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts.

As a general rule, you should know that the law makes no distinction between direct or circumstantial evidence but simply requires that you, the jury, find the facts based on the evidence presented during the trial, both direct and circumstantial.

Now, the parties may have stipulated or agreed to certain facts in this case. When the lawyers for both sides stipulate as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard the fact as proven.

Certain testimony over the course of the trial has been presented to you through depositions. A deposition is the sworn, recorded answers to questions asked to a witness in advance of the trial.

If a witness cannot be present to testify in

person, then the witness's testimony may be presented under oath in the form of a deposition.

As I told you earlier, before the trial, the attorneys representing the parties questioned these deposition witnesses under oath. At that time, a court reporter was present and recorded their sworn testimony.

Both sides have had the opportunity to contribute portions of that testimony to be played in open court.

Deposition testimony, ladies and gentlemen, is entitled to the same consideration by you, the jury, as testimony given by a witness who appears in person physically from the witness stand.

Accordingly, you should judge the credibility and importance of deposition testimony to the best of your ability, just as if the witness had appeared in person and testified before you in open court.

Now, while you should consider only the evidence in this case, you should understand, ladies and gentlemen, that you are permitted to draw such reasonable inferences from the testimony and the exhibits as you feel are justified in the light of common experience.

In other words, ladies and gentlemen, you may make deductions and reach conclusions based on reason and common sense that leads you to draw these from the facts that have been established by the testimony and the evidence in this

case. However, you should not base your decisions on any evidence not presented by the parties in open -- open court during the course of the trial.

Now, unless I instruct you otherwise, you may properly determine that the testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence, you believe that single witness.

When knowledge of a technical subject may be helpful to the jury, a person who has special training and experience in that technical field, called an expert witness, is permitted to state his or her opinions on those technical matters to the jury.

However, ladies and gentlemen, you're not required to accept those opinions. As with any other witness, it's solely up to you to decide who you believe and who you don't believe and whether or not you want to rely on their testimony.

Now, certain exhibits have been shown to you during the course of the trial that were illustrations. We call these types of exhibits demonstrative exhibits or sometimes just demonstratives for short.

Demonstrative exhibits are a party's description, picture, or model to describe something involved in the

trial. If your recollection differs from the demonstratives, you should rely on your recollection.

Remember, demonstrative exhibits, which are sometimes called jury aids, are not evidence, but the witness's testimony during which a demonstrative is used is evidence.

In any legal action, facts must be proven by a required amount of evidence known as the burden of proof. The burden of proof in this case is on the Plaintiffs for some issues and on the Defendant for other issues.

There are two burdens of proof that you will apply in this case. One is the preponderance of the evidence. The other is clear and convincing evidence.

Now, the Plaintiffs in this case, Optis Wireless Technology, LLC, PanOptis Patent Management, LLC, Optis Cellular Technology, LLC, Unwired Planet, LLC, and Unwired Planet International Limited, who you will hear simply referred to throughout the remainder of these instructions and counsels' arguments as the Plaintiffs.

You may hear them collectively referred to as Optis, some may refer to them jointly as PanOptis. All three of these mean the same thing. They're the Plaintiffs, and the Plaintiffs have the burden of proving patent infringement by a preponderance of the evidence.

Optis also has the burden of proving willful

patent infringement by a preponderance of the evidence.

And Optis also has the burden of proving damages for patent infringement by a preponderance of the evidence.

A preponderance of the evidence means evidence that persuades you that a claim is more probably true than not true. And this is sometimes talked about as being the greater weight and degree of credible testimony.

Now, the Defendant in this case is Apple Inc., who you will hear referred to, and have throughout the trial, either as Defendant or as Apple. And Apple has the burden of proving patent invalidity by clear and convincing evidence.

Clear and convincing evidence means evidence that produces in your mind an abiding conviction that the truth of the party's factual contentions are highly probable.

Although proof to an absolute certainty is not required, the clear and convincing evidence standard requires a greater degree of persuasion than is necessary for the preponderance of the evidence standard.

If the proof establishes in your mind, ladies and gentlemen, an abiding conviction in the truth of the matter, then the clear and convincing evidence standard has been met.

Now, as I told you previously, these burdens of proof, neither one, are to be confused with the burden of

proof called beyond a reasonable doubt, which is the burden of proof we apply in criminal cases.

The burden of proof, beyond a reasonable doubt, does not apply in this or any other civil case. You should not confuse clear and convincing evidence with evidence beyond a reasonable doubt. Clear and convincing evidence is not as high a burden as beyond a reasonable doubt, but it is a higher burden than the preponderance of the evidence.

Now, in determining whether any fact has been proved by a preponderance of the evidence or by clear and convincing evidence, you may, unless otherwise instructed, consider the stipulations, the testimony of the witnesses, regardless of who called them, and all the evidence -- evidence -- excuse me, all the exhibits received into evidence during the course of the trial, regardless of who may have produced them.

Now, as I did at the beginning of the case, I'll give you a summary of each side's contentions, and then I'll provide you with detailed instructions on what each side must prove to win on each of its contentions.

As I previously said, this action is one for patent infringement, and this case concerns five separate United States patents. They are:

United States Patent No. 8,019,332, which you've

heard referred to throughout the trial as the '332 patent;

United States Patent No. 8,385,284, which you've heard to referred to consistently as the '284 patent;

United States Patent No. 8,411,557, which you've heard referred to throughout the trial as the '557 patent;

United States Patent No. 8,102,833, which you've heard referred to as the '833 patent;

And United States patent 9,001,774, which you've heard referred to consistently throughout the trial as the '774 patent.

I will refer to these as the patents-in-suit or as the asserted patents, and in so doing, ladies and gentlemen, I'm referring to all five of them collectively.

Optis has alleged that certain iPhones, iPads, and Apple Watches directly infringe the asserted claims either literally or through the Doctrine of Equivalents. Additionally, Optis has alleged that certain iPhones, iPads, and Apple Watches indirectly infringe the asserted claims of the asserted patents.

Sometimes in these instructions I'll refer to the products -- these products in shorthand by just calling them the accused products.

Optis contends that the accused products infringe the following claims:

Claims 6 and 7 of the '332 patent;

Claims 1, 14, and 27 of the '284 patent;

Claims 1 and 10 of the '557 patent;

Claim 6 of the '774 patent;

And Claim 8 of the '833 patent.

These claims are sometimes referred to as the asserted claims, and Optis also alleges that Apple's infringement is and has been willful. Optis seeks damages in the form of a reasonable royalty for Apple's alleged infringement.

Apple denies that the accused products infringe the asserted claims of the asserted patents. Apple further denies that it willfully infringed any claim of the asserted patents. Apple also contends that the asserted claims are invalid. Apple denies that it owes Optis any damages in this case.

Now, it's your job, members of the jury, to decide whether Optis has proven that Apple has infringed any of the asserted claims of the asserted patents and whether that infringement was willful. You must also decide whether Apple has proven that any of the asserted claims of the asserted patents are invalid.

If you decide that any of the asserted claims have been infringed and are not invalid, then you will need to decide the amount of money damages to be awarded to Optis to compensate it for that infringement.

I'll now instruct you on a number of established facts, and you must take these facts as true when deciding the issues in this case.

No. 1. The '332 patent was filed for on December the 8th, 2010, and was issued on September the 13th, 2011, by the United States Patent and Trademark Office, as you've heard them called the PTO. The '332 patent has an effective filing date of March the 7th, 2008.

2. The '833 patent was filed for on September the 11th, 2008, and issued on January the 24th, 2012, by the PTO. The '833 patent has an effective filing date of November the 13th, 2007.

No. 3. The '284 patent was filed for on August the 16th, 2010, and issued on February the 26th, 2013, by the PTO. The '332 patent has the effective filing date of December 20th, 2007.

No. 4. The '557 patent was filed for on December 21st, 2011, and issued on April the 2nd, 2013, by the PTO. The '557 patent has an effective filing date of March the 20th, 2006.

No. 5. The '774 patent was filed for on November the 12th, 2013, and issued on April the 7th, 2015, by the PTO. The '774 patent has an effective filing date of April the 21st of 2005.

Now, before you decide many of the issues in this

case, ladies and gentlemen, you'll need to understand the role of the patent claims. The claims of a patent are those numbered sentences at the end of the patent. The claims define the owner's rights under the law.

The claims are important, because it's the words of the claims themselves that define what the patent covers. The figures and the text in the rest of the patent are intended to provide a description or examples of the invention, and they provide a context for the claims, but it is the claims, ladies and gentlemen, that define the breadth of the patent's coverage.

Each claim is effectively treated as if it were its own separate patent, and each claim may cover more or cover less than any other claim. Therefore, what a patent covers collectively or as a whole depends on what each of its claims covers.

You'll first need to understand what each claim covers in order to decide whether or not there is infringement of that claim and to decide whether or not the claim is invalid.

The first step is to understand the meaning of the words used in the patent claim.

Now, the law says that it is my role as the judge to define the terms of the claims, but it's your role as the jury to apply my definitions to the issues that you're

asked to decide in this case.

So, accordingly, and as I explained at the beginning of the case, I've determined the meaning of certain claim language, and I've provided to you definitions of those claim terms in your juror notebooks.

You must accept my definitions of these words in the claims as being correct. And it's your job to take these definitions that I've supplied and apply them to the issues that you are asked to decide, including the issues of infringement and invalidity.

My interpretation of the claim terms should not be taken by you as an indication that I have any view regarding the issues of infringement or invalidity.

The decisions regarding these issues, infringement and invalidity, are yours to make, ladies and gentlemen.

For claim limitations where I have not construed -- that is, defined or interpreted -- any particular term, you're to use the plain and ordinary meaning of that term as understood by one of ordinary skill in the art, which is to say in the field of technology of the patent at the time of the alleged invention.

The meaning of the words of the patent claims must be the same when deciding both the issues of infringement and validity.

I'll explain to you how a claim defines what it

covers.

A claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. If a device satisfies each of these requirements in that sentence, then it is covered by and infringes the claim.

There can be several claims in a patent. A claim may be narrower or broader than another claim by setting forth more or fewer requirements. The coverage of a patent is assessed on a claim-by-claim basis.

In patent law, the requirements of a claim are often referred to as the claim elements, or they're sometimes called the claim limitations.

When a product meets all of the requirements of a claim, it is said it meets all of its limitations or all of its elements, and the claim is said to cover that product, and that product is said to fall within the scope of that claim.

In other words, a claim covers a product where each of the claim elements or limitations is present in that product.

If a product is missing even one limitation or element of a claim, the product is not covered by that claim.

However, it doesn't mean that every word of the

claim must exist identically in the accused products. If the product is not covered by the claim, the product does not infringe the claim.

Now, this case involves two types of patent claims, ladies and gentlemen, independent claims and dependent claims.

An independent claim does not refer to any other claim in the patent. An independent claim sets forth all the requirements that must be met in order to be covered by the claim. It's not necessary to look to any other claim to determine what an independent claim covers.

On the other hand, a dependent claim does not by itself recite all the requirements of the claim but refers to another claim or claims for some of its requirements. In this way, the dependent claim depends on another claim.

The law considers a dependent claim to incorporate all the requirements of the claim or claims to which it refers, or as we sometimes say, from which it depends, as well as those additional claim terms set forth -- those additional elements set forth in the dependent claim itself.

To determine what a dependent claim covers, it's necessary to look at both the dependent claim itself and any other claim or claims to which it refers or from which it depends.

A product that meets all the requirements of both the dependent claim and the claim or claims to which it refers or from which it depends is covered by that dependent claim.

Now, certain claims in the asserted patents use the phrase "means for." This "means for" phrase has a special meaning in patent law. It's called a mean-plus-function requirement. It does not cover all of the structures that could perform the function set forth in the claim.

Instead, it covers a structure or set of structures that performs that function and that is either identical or equivalent to the structures described in the patent for performing the function.

The issue of whether two structures are identical or equivalent is for you to decide.

Certain claims in the asserted patents use the word "comprising." Comprising means including or containing.

When the word "comprising" is used, a product that includes all the limitations or elements of the claim, as well as additional elements, is covered by the claim. Some of the claims of the patents-in-suit use the word "including." In a claim, "including" means comprising.

For example, if you take a claim that covers the

invention of a table, if the claim recites a table -- a table comprising a tabletop, four legs, and the nails to hold the legs and the tabletop together, the claim will cover any table that contains these structures, even if the table also contains other structures, such as leaves that would go in the tabletop or wheels that would go on the ends of the legs.

Now, that's a simple example using the word "comprising" and what it means. In other words, ladies and gentlemen, it can have other features in addition to those that are covered by the patent.

If a product is missing even one element or limitation of a claim, it does not meet all the requirements of the claim and is not covered by the claim. If a product is not covered by the claim, it does not infringe that claim.

I'll now instruct you on infringement in more detail.

If a person makes, uses, sells, or offers for sale within the United States or imports into the United States what is covered by a patent claim without the patent owner's permission, that person is said to infringe the patent.

To determine whether there is infringement, you must compare the asserted claims, as I've defined each of

them, to the accused products.

You should not compare the accused products with any specific example set out in the patent or with the prior art in reaching your decision on infringement. As I've reminded you during the trial, the only correct comparison is between the accused product and the language of the claim itself.

You must reach your decision as to each assertion of infringement based on my instructions about the meaning and scope of the claims, the legal requirements for infringement, and the evidence presented to you by both of the parties.

I'll now instruct you on the specific rules that you must follow to determine whether Optis has proven that Apple has infringed one or more of the patent claims involved in this case.

In order to prove infringement of a patent claim, Optis must show by a preponderance of the evidence that the accused product includes each requirement or limitation of the claim, either literally or under the Doctrine of Equivalents.

The issue of infringement, ladies and gentlemen, is assessed on a claim-by-claim basis within each patent. Therefore, there may be infringement of a particular patent as to one claim, even if there is no infringement as to

other claims in that patent.

In this case, Optis contends that Apple literally infringes Claims 6 and 7 of the '332 patent; Claims 1, 14, and 27 of the '284 patent; Claim 8 of the '833 patent.

In addition, Optis contends that Apple infringes Claims 1 and 10 of the '557 patent, and Claim 6 of the '774 patent, both literally and under the Doctrine of Equivalents.

In order to infringe literally a patent claim -- or I should say to literally infringe a patent claim, the accused product must include or perform each and every element of the claim.

Thus, in determining whether Apple infringes Optis's asserted claims, you must determine if the accused product contains or performs each and every element recited in the claim of the asserted patent.

A claim element is literally present if it exists in or is performed by the accused product as it is described in the claim language, either as I've explained it to you, or if I did not explain it, according to the plain and ordinary meaning as understood by one of ordinary skill in the art.

For Claims 1 and 10 of the '557 patent and Claim 6 of the '774 patent, if an accused product does not literally infringe the claim, there can still be

infringement if Optis proves that the accused product satisfies the claim under the Doctrine of Equivalents.

Under the Doctrine of Equivalents, an accused product infringes a claim if it performs steps or contains elements corresponding to each requirement of the claim that are equivalent to, even though not literally met by, the accused product.

You may find that a step or element is -- is equivalent to a requirement of a claim that is not literally met if a person having ordinary skill in the field of the technology of the patent would have considered the differences between them to be insubstantial or would have found that the structures perform substantially the same function in substantially the same way to -- to achieve substantially the same results as the requirements of that claim limitation.

Going back to an example I gave you earlier about a patent claim that recites a table comprising as its elements, a tabletop, legs, and nails.

A table that, in fact, contained a tabletop, legs, and nails would literally infringe the patent claim.

However, a table that consisted, instead, of a tabletop, legs, and screws, instead of nails, might still infringe the same claim under the Doctrine of Equivalents if the screws, when used to perform substantially the same

function as the nails in substantially the same way achieves substantially the same result.

Now, that's an example illustrating the Doctrine of Equivalents.

In order to prove that an accused product meets a limitation under the Doctrine of Equivalents, Optis, the Plaintiff, must prove the equivalency to the claim element by a preponderance of the evidence.

A patent can be directly infringed even if the alleged infringer did not have knowledge of the patent and without the infringer knowing that what it was doing is infringement of the claim.

A patent may also be directly infringed, even though the accused infringer believes in good faith that what it is doing is not infringement of the patent.

Now, as I have previously explained, certain claims include requirements that are mean-plus-function forms.

A product meets a mean-plus-function requirement of a claim if, one, it has a structure or set of structures that performs the identical function recited in the claim; and, two, that structure or set of structures is either identical or equivalent to one or more of the described structures that I defined earlier as performing the associated function of the claim term.

If a product does not perform the specific function recited in the claim, the mean-plus-function requirement is not met, and the product does not directly infringe the claim.

Alternatively, even if a product has a structure or set of structures that performs the function recited in the claim but the structure or set of structures is neither identical to nor equivalent to the structure that I defined to you as being described in the patent and performing this function, the product does not directly infringe the asserted claim.

None of this alters the fact that all of the elements of a claim must be present, either literally or under the Doctrine of Equivalents, for that claim to be infringed.

If even a single element of a claim is neither literally present in the accused product nor present under the Doctrine of Equivalents, then you must find that the accused product does not infringe that claim.

Optis also alleges in this case that Apple is liable for indirect infringement by actively inducing its users to directly infringe the asserted claims. As with direct infringement, you must determine whether there has been induced infringement on a claim-by-claim basis.

Apple is liable for induced infringement of a

claim only if Optis proves by a preponderance of the evidence that:

(1) the acts have been carried out by Apple's users and directly infringe that claim;

(2) Apple has taken action intending to cause the infringing acts by its users,

And, (3), Apple has been aware of the asserted patents and has known that the acts of its users constitute infringement of the asserted patents or was willfully blind to that infringement.

Now, to establish induced infringement, it's not sufficient that someone else directly infringes a claim, nor is it sufficient that the company accused of inducing another's direct infringement merely had knowledge or notice of an asserted patent or had been aware of the acts by another that allegedly constitute direct infringement, and the mere fact that the company accused of inducing another's direct infringement had known or should have known that there was a substantial risk that someone else's acts would infringe is not sufficient.

Rather, in order to find inducement, you must find that Apple specifically intended or was willfully blind to that infringement.

In this case, Optis also contends that Apple willfully infringed its patents.

If you decide that Apple has infringed, you must go on and separately address the additional issue of whether or not Apple's infringement was willful.

Optis must prove willfulness by a preponderance of the evidence. In other words, you must determine whether or not it is more likely than not that Apple willfully infringed.

You may not determine that the infringement was willful just because Apple knew of the asserted patents and infringed them.

However, you may find that Apple willfully infringed if you find that it acted egregiously, willfully or wantonly. You may find Apple's action were egregious, willful, or wanton if it acted in reckless or callous disregard of, or with indifference to the rights of Optis.

A defendant is indifferent to the rights of another when it proceeds in disregard of a high or excessive danger of infringement that was known to it or was apparent to a reasonable person in its position.

You're determine, ladies and gentlemen -- your determination, ladies and gentlemen, of willfulness should incorporate the totality of the circumstances based on all the evidence that's been presented during the trial. And willfulness can be established by circumstantial evidence.

Knowledge of the existence of a patent or a patent

family can be relevant to the question of willful infringement.

For example, if Apple knew of the -- of the existence of a patent or subjectively believed that there was a high probability that a patent existed and took deliberate actions to avoid learning of the patent, you may take this into account when considering willfulness. You must -- you may also take into account whether Apple had knowledge of a patent family.

I'll now instruct you on the rules that you must follow in deciding whether or not Apple has proven by clear and convincing evidence that the asserted claims of the patents are invalid.

An issued United States patent is accorded a presumption of validity based on the presumption that the United States Patent and Trademark Office, which you've heard referred to throughout this trial as the PTO or sometimes just the Patent Office, acted correctly in issuing the patent. This presumption of validity extends to all United States patents that are issued by the PTO.

In order to overcome this presumption, Apple must establish by clear and convincing evidence that the Plaintiffs' patents or any claim in the patent is not valid.

The time it took the United States Patent and

Trademark Office to examine and grant the patents-in-suit is not relevant to any issue in this case. Even though the PTO examiner has allowed the claims of a patent, you have the ultimate responsibility for deciding whether the claims of the patent are valid.

Like infringement, ladies and gentlemen, invalidity is determined on a claim-by-claim basis. Claims are construed in the same way for determining infringement as for determining invalidity.

You must apply the claim language consistently and in the same manner for issues of infringement and for issues of invalidity. You must determine separately for each claim whether that claim is invalid.

Now, at times, you'll hear me make references to the prior art. In patent law, a system, device, method, publication, or patent that predated the patent claim at issue is called prior art.

For a prior art reference to be considered for the purposes of determining whether or not the claims are invalid, the prior art item or reference must have been made, known, used, filed, or published more than a year before the effective date of the patent, which you've heard referred to at times as the priority date.

As I've previously explained to you, to obtain a patent, one must first file an application with the PTO,

the United States Patent and Trademark Office.

The process of obtaining a patent is called patent prosecution, and the applications submitted to the PTO includes within it what is called the specification.

The specification is required to contain a written description of the claimed invention telling what the invention is, how it works, how to make it, and how to use it.

Apple contends that all of the patents-in-suit are invalid as being obvious. Even though an invention may not have been identically disclosed or described before it was made by the inventor in order to be patentable, the invention also must not have been obvious to a person of ordinary skill in the field of technology of the patent at the time the invention was made or before the filing date of the patent.

Apple is required to establish that a patent claim is invalid by showing by clear and convincing evidence that the claimed invention would have been obvious to persons having ordinary skill in the art at the time the invention was made or the patent was filed in the field of the invention.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of the invention that someone would have had at

the time the invention was made or the patent was filed, the scope and content of the prior art, and any differences between the prior art and the claimed invention.

Keep in mind, ladies and gentlemen, that the existence of each and every element of the claimed invention in the prior art does not necessarily prove obviousness. Most, if not all, inventions rely on the building blocks of prior art.

In considering whether a claimed invention is obvious, you may, but are not required to, find obviousness if you find that at the time of the claimed invention or the patent's filing date there was a reason that would have prompted a person of ordinary skill in the field of the invention to combine the known elements in a way that claimed -- that the claimed invention does, taking to it -- into account such factors as:

(1) whether the claimed invention was merely the predictable result of using prior art elements according to their known function;

(2) whether the claimed invention provides an obvious solution to a known problem in the relevant field;

(3) whether the prior art teaches or suggests the desirability of combining elements in the claimed invention, such as where there is a motivation to combine;

(4) whether the prior art teaches away from

combining elements in the claimed invention;

(5) whether it would have been obvious to try the combination of elements in the claimed invention, although obvious to try is not sufficient in unpredictable technologies; and

(6) whether the change resulted more from design incentives or other market forces.

To find that it rendered the invention obvious, you must find that the prior art provided a reasonable expectation of success.

In determining whether the claimed invention was obvious, consider each claim separately. Do not use hindsight. In other words, you should not consider what a person of ordinary skill in the art would know now or what has been learned from the teaching of the asserted patents.

In making these assessments, you should take into account any objective evidence, sometimes called secondary considerations, that may shed light on the obviousness or not of the claimed invention, such as:

(1) whether the invention was commercially successful;

(2) whether the invention satisfied -- satisfied a long-felt need in the art;

(3) whether others copied the invention;

(4) whether the invention achieved unexpected

results;

(5) whether others in the field praised the invention; and

(6) whether the invention departed from other principles or accepted wisdom of the art.

Now, no one factor alone is dispositive, and you must consider the obviousness or non-obviousness of the inventions as a whole. These factors are relevant only if there is a connection or nexus between the factor and the asserted claims of the asserted patents.

Even if you conclude that some of the above indicators have been established, those factors should be considered along with all other evidence in the case in determining whether Apple has proven that the claimed invention would have been obvious.

Now, several times in my instructions, ladies and gentlemen, I've referred to a person of ordinary skill in the field of the invention. It's up to you to decide the level of ordinary skill in the field of the invention.

In deciding what the level of ordinary skill is, you should consider all the evidence introduced at the trial including:

(1) the levels of education and experience of inventors or other persons working in the field;

(2) the types of problems encountered in the

field;

(3) prior art solutions to those problems;

(4) rapidity with which innovations are made; and

(5) the sophistication of the technology.

A person of ordinary skill in the art is a hypothetical person who is presumed to be aware of all the relevant prior art at the time of the claimed invention.

If you find that Optis has proven that Apple has infringed any of the asserted claims and that Apple has failed to show that the asserted claims are invalid, you must then consider the proper amount of damages, if any, to award to Optis.

I'll now instruct you about the measure of damages. However, ladies and gentlemen, by instructing you on damages, I'm not suggesting which party should win this case on any issue.

If you find that Apple has not infringed any of the asserted claims or that all of the asserted -- excuse me, all of the infringed claims are invalid, then Optis is not entitled to any damages.

If you award damages, they must be adequate to compensate Optis for any infringement of the asserted claims you may find. You must not award Optis more damages than are adequate to compensate for the infringement nor should you include any additional amount for the purpose of

punishing Apple.

The patent laws specifically provide that damages for infringement may not be less than a reasonable royalty.

Optis has the burden to establish the amount of its damages by a preponderance of the evidence. In other words, you should only award those damages that Optis establishes that it more likely than not suffered as a result of Apple's infringement of the asserted claims.

Now, while Optis is not required to prove the amount of its damages with mathematical precision, it must prove them with reasonable certainty. Optis is not entitled to damages that are remote or speculative.

A reasonable royalty, ladies and gentlemen, is the amount of royalty payment that a patentholder and the alleged infringer would have agreed to in a hypothetical negotiation taking place at a time immediately prior to when infringement first began.

You've heard references throughout this trial for whether Optis should be entitled to a running royalty or a lump-sum royalty.

If you find that Optis is entitled to damages, you must decide whether the parties would have agreed to a running royalty or a fully paid-up, lump-sum royalty at the time of the hypothetical negotiation.

A running royalty is a fee paid for the right to

use the patent that is paid for each unit of the infringing products that have been sold. If there are additional units sold in the future, any damages for these sales will not be addressed by you.

If you decide that a running royalty is appropriate, then the damages that you award, if any, should reflect the total amount necessary to compensate Optis for Apple's past infringement.

However, a lump-sum royalty is when the infringer pays a single price for a license covering both past and future infringing sales.

If you decide that a lump sum is appropriate, then the damages you award, if any, should reflect the total amount necessary to compensate Optis for Apple's past and future infringement.

Now, you've heard throughout the trial references to whether or not the reasonable royalty should be a running royalty or a lump-sum royalty.

If you find Optis is entitled to damages, you must decide whether the parties would have agreed to a running royalty or a fully paid-up, lump-sum royalty at the time of the hypothetical negotiation.

Now, in considering this hypothetical negotiation, you should focus on what the expectations of the patentholder and the alleged infringer would have been had

they entered into an agreement at that time and had they acted reasonably in their negotiations.

In determining this, you must assume that both parties believed that the asserted claims were valid and infringed and that both parties were willing to enter into an agreement.

The reasonable royalty that you determine must be a royalty that would have resulted from the hypothetical negotiation and not simply a royalty that either party would have preferred.

Now, the law requires that any damages awarded to Optis correspond to the value of the alleged inventions within the accused products, as distinct from other unpatented features of the accused product or other factors such as marketing or advertising or Apple's size or market position.

This is particularly true where the accused product has multiple features and multiple components not covered by the patent or where the accused product works in conjunction with other non-patented items.

Therefore, the amount as you find -- the amount you find as damages must be based on the value attributable to the patented technology alone.

In determining a reasonable royalty, you should consider all facts known and available to the parties at

the time the infringement began. You should also consider the following:

The royalties received by the patentee for the licensing of the patent-in-suit, proving or tending to prove an established royalty;

The rates paid by the licensee for the use of other patents comparable to the patents-in-suit;

The nature and scope of the license, as either exclusive or non-exclusive or as restricted or non-restricted in terms of territory or with respect to whom the manufactured product may be sold;

The commercial relationship between the licensor and licensee, such as whether they're competitors in the same territory in the same line of business or whether they are inventor and promoter;

The duration of the patent and the term of the license;

The extent to which the infringer has made use of the invention and any evidence probative of the value of that use;

The portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements; the manufacturing process, business risks, or significant features or improvements added by the infringer;

The opinion testimony of qualified experts; and

The -- the amount that a licensor, such as Optis, and a licensee, such as Apple, would have agreed upon at the time the infringement began if both had been reasonably and voluntarily trying to reach an agreement, that is, the amount which a prudent licensee who desired as a business proposition to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been accepted or acceptable by a prudent patentee who was willing to grant a license.

Now, no one of these factors is dispositive, ladies and gentlemen. And you can and you should consider the evidence that's been presented to you in this case on each of these factors.

You may also consider any other factors which in your minds would have increased or decreased the royalty Apple would have been willing to pay and that the patent owner, Optis, would have been willing to accept with both acting as normally prudent business people.

In making a reasonable royalty determination, you may also consider evidence concerning the availability, or lack thereof, of non-infringing alternatives to the patented invention.

You may compare the patented invention to non-infringing alternatives to determine the value of the patented invention, including the utility and advantages of the patent over the old modes or devices, if any, that had been used to achieve similar results.

When dealing with patents claimed to be standard essential, there are two special apportionment issues that arise.

First, the patented feature must be apportioned from all the unpatented features reflected in the standard.

Second, the patent owner's royalty must be premised on the value of the patented feature, not any value added by the standard's adoption of the patented technology.

These steps are necessary to ensure that the royalty award is based on the incremental value of the patented invention -- that -- the incremental value that the patented invention adds to the product, not any value added by the standardization of that technology. And this is particularly true for patents claimed to be standard essential.

As I have already told you, you must not award Optis any additional amount for the purpose of punishing Apple or setting an example.

Additionally, you must not consider Optis's

allegations of willfulness in considering damages.

Consideration of willfulness, ladies and gentlemen, is entirely separate from the question of damages. And you may not increase damages because you find willfulness or decreased damages because you did not find willfulness.

I will take your decision regarding the issue of willfulness into account later.

With those instructions, ladies and gentlemen, we're now ready to hear closing arguments from the attorneys in this case.

Mr. Sheasby, you may now present the Plaintiffs' first closing argument. Would you like a warning or warnings on your time?

MR. SHEASBY: Your Honor, we would like warnings on 23 left, 10, and 4 left.

And with the Court's permission, Mr. Baxter will present the first part of the closing.

THE COURT: All right. 23 minutes remaining from the total of 45?

MR. SHEASBY: Yes, Your Honor.

THE COURT: 23 -- what was the other warning?

MR. SHEASBY: 10 and 4.

THE COURT: 10 and 4.

All right. Mr. Baxter, you may present the

Plaintiffs' first closing argument.

MR. BAXTER: Thank you, Your Honor. May it please the Court.

Ladies and gentlemen of the jury, we obviously cannot thank you enough. It's been a long week. Seems like it's been longer than a week ago when we picked you, but you've worked hard, and we cannot thank you enough.

What I want to do is harken back to what we said, though, on the very first day. And that is, this case is about responsibility, whether or not Apple is going to take responsibility; and, two, what Apple told you is they wanted to look under the hood.

Well, I want to look under the hood with you for just a few minutes. And let's talk about what we saw when we did that.

The very first thing that we found out is that Apple's expert, who you saw by video, admitted that they practice LTE. And, of course, he had to because that's what they do.

They use the LTE network to transmit data and phone conversations and text and videos, and they did it because the 3G that they were using that they got -- they hung with for an extra year was old, it was clunky, your videos stalled, and they simply couldn't compete against Samsung and the other film manufacturers if they kept the

old technology.

So the very first thing we know is that they use the LTE.

And, Jan, if you can get me the slide up.

Thank you, ma'am.

The second thing as we look under the hood, after we found out that they practice LTE, is we brought to you Johanna Dwyer, an expert who testified for the very first time in her life, was as good an expert as I've seen, and who said that she looked at the patents-in-suit that you have before you, and she looked at the standard.

And her job for the last 25 years, as she put it, is to be a chart breaker, to try to break the charts to see how it didn't actually fit a product or a standard.

And what did she say after she looked at all of it?

They were truly standard essential.

Now, the first thing I noticed after that is -- is that Apple didn't have anybody that could map the patents to the standard, nor did they try. There were other experts out there like Ms. Dwyer, not as good, but they could have brought you one. Nothing. Silence. It's not under the hood.

But what is under the hood is -- if we can see the next slide -- is the experts they did bring you. They have

combined, represented Apple 24 times. They've been paid millions of dollars in direct pay from Apple. They had no data. They had no experiments. They had nothing to really help you out.

And, of course, they were going to tell you that, oh, these things don't infringe, and they're invalid, because for the last 24 times, that's exactly what they've done.

Well, what was the next thing we might look at? And that is, was there a benefit?

And you remember we showed you the chart of a 10 percent benefit going down to .19, and collectively a 24 percent benefit. And what is it that the experts from Apple said?

Well, Mr. Lanning said that he didn't have any data to -- to change that.

The next slide.

Dr. Buehrer said he didn't have any reason to dispute the speed.

And Mr. Wells said exactly the same thing.

And so when you look under the hood at the benefits of these patents, nobody from Apple contradicted that they, in fact, increased the speed over the old form -- that is, if Apple couldn't use LTE, how much faster it is. And it turns out they have absolutely no evidence

on that at all.

Well, what's the next thing we can look at as we look under the hood? And that is licenses -- a licensing expert.

We brought to you Mr. Kennedy. He's right out here. I asked all the experts to stick around because I wanted to point them out.

And, Mr. Kennedy, thank you.

Mr. Kennedy has negotiated 200 licenses.

And Mr. -- Dr. Perryman, the Apple expert, zero, not one -- not the first one, and he had to admit it.

And the problem -- one of the problems with Dr. Perryman's testimony was that he said: Oh, all the patents are the same. And you heard Mr. Kennedy say that's never appropriate. You never do it on a patent-by-patent basis that they're all the same. You've got to look individually about why these are important.

Well, what's the next thing we saw under the hood? And that is a consumer survey.

Now, we know and you know from the testimony that Apple does consumer surveys all the time. And they -- we even know the name -- Professor John Hauser who does those Apple surveys for them.

If they really thought the technology wasn't important, they would have paraded Dr. Hauser or somebody

else up on that witness -- they said, oh, we talked to consumers. They don't care about speed. They don't care about reliability. They wouldn't have cared if we kept that old technology. It would have been okay. We would have been just fine. No survey expert from Apple.

What did you see? Well, you saw Dr. Reed-Arthurs, who's also here.

Doctor?

And she told you that she surveyed 1,400 people and talked to them about upload and download speeds, and we know from all of her survey work that the customers of Apple, the consumers of cell phones think that the amount of value for that is $8.97.

We can see the next slide.

Now, here's one of the more interesting things that we saw in this case is that Dr. Perryman got on the stand. And he's going to talk to you about damages, and I want, when you get into the jury room and you have a chance to look over Judge Gilstrap's charge, to check out Pages 21 and 22, because there you're going to find the Georgia-Pacific factors that we talked about.

And you will remember that Mr. Kennedy went through them one-by-one, explained what their importance was, explained how he used it to get to a damage calculations, and when we got to Dr. Perryman, here's what

he said.

Did you in your direct testimony, did you admit that you did not perform a Georgia-Pacific analysis?

And he said: I didn't perform it.

Judge Gilstrap has told you in the charge that you are to use the factors that Mr. Kennedy talked to you about that Dr. Perryman didn't breathe a word about, and his testimony is -- is of exactly zero use to you under the analysis that Judge Gilstrap has told you in the charge you need to perform in order to get to damages.

Let's look at the next slide.

We also heard from Mr. Kennedy that it's been Apple's strategy to delay payments, reduce payments, and devalue patents. It's all part of their plan.

Next slide.

There also is the question of something called the SSU, or the smallest salable unit.

We got Mr. Blevins to say every part of the iPhone is involved in the use of the iPhone; the battery, the display, whatever.

Next slide.

We also know from the licenses that there is not

REDACTED BY ORDER OF THE COURT

[redacted]

that they have, and you didn't see it in the charge. You

04:00:33 go back through it when you get in there and see if
04:00:36 Judge Gilstrap told you anything about that charge.
04:00:38 At the end of the day, the only evidence is these
04:00:42 patents are incredibly valuable, they're infringed, and
04:00:46 they're worth $506 million.
04:00:51 Thank you, Your Honor.
04:00:52 THE COURT: All right. Defendants may now present
04:00:54 their closing argument.
04:00:56 MR. SHEASBY: Your Honor, we're going to split the
04:00:58 first --
04:00:59 THE COURT: Oh, you're going to split this time?
04:01:01 You're going to continue?
04:01:02 MR. SHEASBY: I'm going --
04:01:03 THE COURT: All right. Then please continue,
04:01:05 Mr. Sheasby.
04:01:06 MR. SHEASBY: Good late afternoon, ladies and
04:01:14 gentlemen of the jury. I want to thank you for your
04:01:17 patience today, last week. I hope you understand how
04:01:21 important this case is to PanOptis's business, how
04:01:25 incredibly important it is.
04:01:26 When I spoke to you earlier last week, I talked
04:01:30 about four questions you're going to have to answer:
04:01:35 Infringement, willful infringement, whether Apple carried
04:01:39 its heavy burden to show invalidity, and damages.
04:01:43 As to infringement, the standard is our burden,

but the burden is that if one pebble, just one pebble falls on PanOptis's side as to infringement, which is slightly stronger than Apple, we prevail on infringement.

And there's actually a reason for that, there's a reason in our law and our Constitution, and that is because property rights are sacred. If one pebble is in our favor, we prevail.

The Judge's instructions, if you read them, will make clear that when you analyze infringement, you must look at the entire patent. You can look at examples in the patent because those are examples of the invention.

And you saw Professors Mahon and Madisetti, who stayed for the closing.

Professors, if you would stand.

How they carefully addressed every single claim and every single element, element-by-element. At 5:30 at night on Thursday or Wednesday, they didn't let you go home. They wanted to show you each and every element.

The opening by Apple was interesting is because I don't know if you heard this, but they told you that every word of a claim must be present. That's something they said. I wrote it down, and I heard it very carefully in their opening.

That's actually not the law. Judge Gilstrap's charge does make clear that each element must be present,

but not each word, because, of course, words can be modified and changed; you can play word games. Apple gave you an inaccurate representation of the law in opening.

You will also hear in the instructions about the Doctrine of Equivalents. An element doesn't need to be literally present. If its equivalent is present, there is infringement.

Now, we presented two types of analysis of infringement. The first type of analysis involves standard essential patents.

And if I can have Slide 14.3, Mr. Huynh.

So --

14.3, Mr. Huynh.

So in Apple's opening they said, we're not going to dispute at all whether we implement the LTE standard. But the words were very studied. They were very careful. When we asked their experts on the stand whether they practice LTE, they said, oh, I don't know what you mean by practice.

But the expert who was in Germany, who we heard from on video, admitted that Apple practices the LTE standard.

What's going on with these word games? Why are these experts who have been retained by Apple collectively 24 times trying to deny that they practice the standard

when Mr. Rodermund, the only expert with 3GPP ETSI experience, admitted just the opposite?

Let's go to Slide 14.25, Mr. Huynh.

The reason that Apple's experts ran from Mr. Rodermund's testimony is because of Ms. Dwyer.

Ms. Dwyer, would you stand?

Ms. Dwyer carefully analyzed each patent and determined that it was essential to the standard. Apple practices the standard.

Ms. Dwyer, who was the only LTE -- LTE 3GPP engineer who actually built the standards, who sat on the committees, looked through the claim charts and analyzed them as essential.

Now, Apple will say, oh, well, of course, we practice the standard. But the parts of the standard these patents cover we don't use.

Well, that doesn't make a lot of sense, and I know it doesn't make sense because Mr. Blevins admitted under oath that our patents are the necessary part to communicate between the base station.

Ms. Dwyer admitted our patents are essential. Mr. Blevins admitted that our patents are necessary to communicate.

We also performed a source code analysis, and we did field experiments to confirm infringement.

I'm going to walk you through each of the five patents, and what's interesting is after the careful analysis of Professors Mahon and Madisetti, there's only a few limitations that Apple tried to dispute.

So for the '774 patent, Apple said, the big issue is whether Apple products receive a processing parameter. That's what they said about the '774 patent.

Here's the claim limitation. Receiving a processing parameter that includes a gain. That's what's in dispute, the sole issue in dispute.

Dr. Mahon -- Professor Mahon showed you how this is the code, a 0 or 1, that is sent from the base station to the mobile device. And he said that code reflects gain information, that one-half is a gain. He said that. He gave you that careful analysis.

Something important happened on cross-examination of Dr. Wells, Apple's expert.

He admitted it, as well. He admits that the message that is sent down to the mobile phone includes the gain, one-half. After all that argument, after all that presentation that he gave, so smooth, on cross-examination, he couldn't -- he was forced to admit that a message is sent that includes a gain.

The '332 patent is the next patent. In this case, the only dispute, and I don't know if you heard this, the

only dispute was whether N/L, whether a division can be performed using something called a shift. That was the only question, whether the division could be formed by something called a shift.

And what was interesting is Dr. Lanning, so smooth, went through pages and pages of testimony telling you how different a division and a shift is, how Apple does a shift, and how totally different that is from division.

And though it was late in the day, on cross-examination, he accepted just the opposite. He admitted that a shift is a divide. They spent 45 minutes trying to convince you that the patent wasn't infringed because a division and a shift are different. In the first 15 minutes of his cross-examination, he admitted the exact opposite under oath.

The next patent we considered was the '833 patent. The main dispute in the '833 patent is whether you go column-by-column and then row-by-row in preparing your mapping. That's what Apple said was the key dispute.

But we actually showed you the source code, and the source code makes clear that the patent -- that the systems do exactly what the claim says.

First, they map within a column-by-column, and they do it row-by-row. Column-by-column, row-by-row. Exactly what the patent requires. The source code does not

lie.

The '284 patent. The '284 patent is a fascinating patent. The reason why it's so fascinating is because do you remember the history? Do you remember how Professor Mahon talked to you about how it was actually presented to the industry and how the industry looked at it and how closely the final table that they adopted matched what was presented to the industry?

And the patent requires a first subset, and then it requires a second subset. And that second subset is reserved for redundancy version. There's no dispute that Apple implements this table.

In fact, if you remember, Professor actually showed you in the code where they reference this table. And so the only dispute is, is there a second subset that is smaller than the first subset that is reserved? And they're trying to tell you -- they spent 30 minutes trying to tell you from Dr. Buehrer, well, there's not a second subset that's reserved.

Look at the table itself. It says reserved in the bottom three rows. And what's changing those bottom three rows? The redundancy version.

They brought a professor from Virginia Tech, smooth, talked to you for a long time, trying to convince you that there is a second subset that is larger than the

04:10:54 first subset, where if you look at the face of that table,
04:10:57 it says the bottom three are reserved. They're reserved
04:11:00 for when the redundancy version changes. Exactly, exactly,
04:11:04 exactly what the claim requires.
04:11:06 I'm now going to speak about the '557 patent. The
04:11:11 '557 patent requires a selecting unit in which sequences
04:11:14 are generated via that selecting unit.
04:11:19 Professor Madisetti talked to you about this at
04:11:24 great length. He talked to you about the fact that when
04:11:26 you think about how to generate a sequence, the patent
04:11:30 actually teaches two ways of doing it. And the second way
04:11:35 of doing it is to generate a code sequence every selection.
04:11:37 Every time you want a code sequence, you generate it. He
04:11:40 spoke about that as an embodiment which teaches how to
04:11:43 understand the claim.
04:11:44 And if you remember, I showed you Judge Gilstrap's
04:11:47 jury instructions where Judge Gilstrap says the same thing.
04:11:51 You use the specification to understand the scope of the
04:11:56 claims.
04:11:56 Generate a code, and from that you -- you -- you
04:12:03 select a plurality of signatures. Exactly what the claim
04:12:09 requires.
04:12:09 Once again, we had this big debate in which
04:12:13 Apple's expert spent all this time in the world, well, we
04:12:16 just don't -- we don't -- we don't infringe the claim. But

you heard he ignored this second embodiment, which Judge Gilstrap said must be used to understand the scope of the claims.

And when we spoke to the engineer of Apple, Apple admitted that they generate a sequence.

These were the only material disputes. Our experts went through limitation-by-limitation, and you'll see that their defenses to these limitation-by-limitation analysis was word games. I don't know what you mean by practice.

Reserved. Well, what do you mean by reserved? This case is not about word games. This case is about fundamental technology that helped to create the 4G/LTE network.

The second issue you are going to be asked to decide is willfulness.

You can believe that it was just a complete coincidence that Apple infringes five of these patents. It's just happenstance that they do it. It doesn't matter. They still must pay us full damages.

But there is a second question. And the question is: Was Apple's conduct willful?

I believe the evidence shows that it was.

PanOptis sent a letter in 2017 making it clear that we had 4G patents that were essential. Apple's

04:13:49 internal lawyer, who testified by deposition, said that
04:13:53 there was no independent investigation done by Apple in
04:13:56 response. She said that under oath. And when we asked her
04:13:59 why, she said: I wouldn't want to speculate.
04:14:02 You can draw an inference as to why Apple didn't
04:14:05 present and why -- why Ms. Mewes answered the question the
04:14:10 way she did.
04:14:11 THE COURT: 23 minutes remaining.
04:14:14 MR. SHEASBY: We heard from two engineers,
04:14:18 Mr. Ramaprasad and Dr. Josiam. But neither of them are
04:14:21 experts on infringement. They are not experts, and they
04:14:24 admitted under oath they did not give an infringement or
04:14:28 validity opinion.
04:14:35 We heard that Apple had accessed our patents in
04:14:37 2018. And then we heard something that Apple asked
04:14:43 Mr. Blevins to say on his redirect examination after I
04:14:46 crossed him.
04:14:47 Mr. Blevins said: Well, I was asked by my boss,
04:14:50 Jeff Williams, to conduct an investigation.
04:14:53 But when we cross-examined him, he said he was
04:14:55 only given the patents a couple weeks before his
04:14:58 deposition. So Apple is saying we did this whole
04:15:05 independent investigation, some lawyers handed him these
04:15:10 patents a couple of weeks before his deposition. They knew
04:15:12 about them since 2018.

04:15:12 The final issue, invalidity. Clear and convincing
04:15:14 evidence. There is a presumption of validity of these
04:15:17 patents. And I will submit to you that Apple has not met
04:15:21 its burden.
04:15:21 Let me give you an example. Mr. -- Dr. Buehrer
04:15:28 talked about how one of the patents required joint
04:15:31 encoding. He couldn't even find a reference that had joint
04:15:33 encoding in it.
04:15:35 The reality is, is that Apple has not presented
04:15:38 any substantial evidence to meet its heavy burden of clear
04:15:47 clear and convincing evidence.
04:15:48 Thank you, ladies and gentlemen.
04:15:50 THE COURT: Does that complete Plaintiffs' first
04:15:52 closing argument?
04:15:53 MR. SHEASBY: Yes, Your Honor.
04:15:54 THE COURT: All right. Defendant may now present
04:15:56 its closing argument to the jury.
04:16:00 Would you like a warning on your time,
04:16:03 Mr. Mueller?
04:16:03 MR. MUELLER: Yes, Your Honor. May I please have
04:16:08 6 minutes and 3 minutes?
04:16:09 THE COURT: 6 minutes remaining and 3 minutes
04:16:12 remaining, you may.
04:16:14 MR. MUELLER: May I proceed, Your Honor?
04:16:20 THE COURT: You may proceed with your closing

argument.

MR. MUELLER: Thank you, Your Honor.

Good afternoon, ladies and gentlemen. Again, my name is Joe Mueller, and this is my last chance to speak with you. And I just want to start by saying thank you for the time you've put in over the last week.

As I said in my opening statement, it's a real privilege to be able to try a case to a jury of fair-minded fellow citizens. And it's a particular privilege to present a case to fair-minded folks who have paid such close attention, as you clearly did. We're grateful.

Now, what we tried to do over the last week was to focus on the facts. We tried to focus on the evidence and not sling mud or throw rocks but focus on the facts the whole way through. And we did it for two reasons.

First, it's just the right thing to do.

And the second thing is, the facts in this case we believe firmly support Apple's positions. And we wanted you to see those facts to see the evidence and to see the truth.

And so for my remaining time with you today, I'm going to review those facts and review those evident -- review the evidence one last time.

And I want to start with a statement that was made in the opening by Plaintiffs' counsel, and the allegation

was made that you would see a document suggesting a plan to destroy our business.

Well, you've now seen the document. Here it is. And as His Honor told you in the jury instructions, the redacted material has nothing to do with this case. But you know what this says. What this says is a set of licensing principles for dealing with patents in the area of cellular technology. It doesn't say destroy anyone's business. There's nothing remotely scandalous about this document.

Now, I actually examined Mr. Kennedy, one of Plaintiffs' damages experts, about this. And he said he disagreed with portions of it, but he acknowledged that portions were quite sensible.

And here I was asking him about the line referring to quality over declaration and royalty stacking. I said: There's nothing troubling about any of that, is there, sir? And he said: No.

Now, it's a document dated from February 2014. And the reason why that's significant is it was three years before the Plaintiffs had actually reached out to Apple by way of letter.

So the notion that this document shows some plot to destroy the Plaintiffs' business is contradicted by the date on the document. It's about three years before the

Plaintiffs reached out to Apple.

And there's another reason why this allegation, trying to destroy their business doesn't make any sense, and it's this: What is their business? What is their business? Who actually goes to work at these five companies each day? What do they do when they get there? How do these five companies relate to each other? And why are there five companies instead of one? Who stands to benefit from this lawsuit? And why don't we know the answers to these questions one week into this trial?

Now, the one thing we do know is that the one and only one fact witness the Plaintiffs presented is Mr. Blasius right here. They did also present the front row here, those -- those experts.

But the one fact witness -- the one fact witness they presented was Mr. Blasius, the one fact witness who actually took the stand. And he had not read the patents even as of the day he testified. He had not read the five patents.

Now, he also hadn't spoken to any of the inventors. He hadn't read the LTE standard. He hadn't done any of that, and yet that was the one fact witness they called.

Now, he told us a bit about these five companies. He told us that four of them operate out of the same office

suite. None of them produce any actual products. None of them are members of ETSI. None of them made technical proposals to ETSI. None of them do that.

And as Mr. Kennedy acknowledged, there's no evidence to suggest that any of the named inventors on these patents would receive any compensation from this case. You've seen not a single document that suggests the inventors who came up with these five patents stand to benefit from this case.

Now, you heard just now in the opening statements from the Plaintiffs, again, some suggestions about Apple not only infringing but doing so willfully. Let's be very, very clear. There's no infringement, there never was, and I'm going to review all the reasons why.

But I want to talk a little bit about how Apple got into the LTE industry. Apple got into the LTE product industry by reaching agreements with folks who supply chips, the cellular chips that go into cellular devices. Qualcomm and Intel, both companies headquartered in California, both companies that have participated in ETSI meetings, both companies that hold thousands of patents, as you've heard. Qualcomm has 140,000 patents. Intel had thousands of patents.

These folks supply chips to companies who make cellular devices, and Apple bought those chips -- bought

those chips and created products that support cellular functionality. And there's no dispute that the Apple products work on an LTE network. They absolutely do.

The notion that that's a fight in this case is a red herring. They work on an LTE network.

There's no allegation in this case that Qualcomm and Intel engineers copied these five patents. As Dr. Mahon said, I am not saying that, no. And no one else did either. There's not a shred of evidence that Qualcomm or Intel copied, studied, took anything from these five patents.

And here's Mr. Blasius. He noted that over the years -- when I asked him: Over the years, Apple has used Qualcomm and Intel as suppliers of baseband chips?

Yes.

Have your five companies ever contacted Qualcomm or Intel?

No.

Not once?

No.

Not once about these five patents?

No.

So the folks who actually make the chips at issue in this case, the Plaintiffs never contacted them to raise these five patents. And for good reason, the chips don't

04:22:57 use those five patents.

04:22:58 Dr. Buehrer, I asked him: Have you ever seen any
04:23:02 evidence that Samsung, Panasonic, or LG, the original
04:23:05 owners, ever contacted Apple about the patents in this
04:23:08 case?

04:23:08 No, I have not.

04:23:09 And you haven't either. There's not a shred of
04:23:14 evidence that the original owners of these patents,
04:23:17 Samsung, Panasonic, LG, ever contacted Apple about any one
04:23:20 of the five.

04:23:21 The first contact was in January 6th, 2017.
04:23:27 That's the letter you've seen.

04:23:29 Now, it doesn't actually mention any of the five
04:23:31 patents by number. It's a general invitation to talk. But
04:23:35 that's the first outreach by the five companies in this
04:23:39 case.

04:23:39 And Blevins told you that Apple responded. And,
04:23:42 of course, they didn't reach any sort of agreement because
04:23:44 Apple didn't want to take a license. And that's why we're
04:23:48 here.

04:23:48 And Apple's reason for doing so was given to you
04:23:51 by Mr. Blevins, the vice president of procurement who has
04:23:56 been here every day of this trial.

04:23:57 He said: Our feeling is that we've essentially
04:24:02 been accused of being cheaters, that we feel like our good

04:24:06 name has been tarnished, and we're here to set the record
04:24:08 straight. Our position is that we do not infringe any of
04:24:11 these patents.
04:24:12 And there's no need to take a license to patents
04:24:15 that you don't use.
04:24:17 So let's go through the evidence that shows that
04:24:19 Apple is not using these five patents. And to orient
04:24:23 ourselves, I want to put on the board here the witnesses
04:24:26 and help show you how they fit into the case.
04:24:32 So for the '284 patent, we have Mr. Blevins,
04:24:45 Ms. Mewes, Dr. Josiam, and Dr. Buehrer. And let me explain
04:24:56 a little bit about why I put the folks where I put them.
04:24:59 Every one of the people I have just put on this
04:25:01 board either helped to create the chips at issue in this
04:25:04 case -- that would be Dr. Josiam and Mr. Ramaprasad, who
04:25:08 took the stand and testified to you -- or investigated how
04:25:11 those chips work.
04:25:13 Mr. Blevins, here he described all the work that
04:25:16 he did to investigate how the chips worked. He talked to
04:25:19 Apple's head of software engineering, interviewed
04:25:22 engineers, spoke to independent experts.
04:25:24 Ms. Mewes, she, in deposition testimony that you
04:25:28 heard, described how she talked to three of their engineers
04:25:31 who came from Intel, and they explained why they didn't --
04:25:34 we didn't practice the patents.

04:25:35 And, of course, the experts, Dr. Buehrer,
04:25:39 Mr. Lanning, and Dr. Wells, also investigated how the chips
04:25:44 worked.
04:25:45 So that's what we put on, evidence from folks,
04:25:48 testimony from folks who either created the chips, created
04:25:51 the chips in the case of Mr. Ramaprasad or Dr. Josiam or
04:25:56 investigated how those chips worked.
04:25:58 Now, for the Plaintiffs' side of the case, they
04:26:03 presented Dr. Madisetti and Dr. Mahon. Each of them did
04:26:23 investigate how the chips worked. We have a disagreement
04:26:26 with them about their analysis, but they did look into the
04:26:28 chips.
04:26:30 However, Ms. Dwyer did not. She did not look at a
04:26:33 single chip. She offered an opinion on essentiality, but
04:26:37 that's not the issue in this case. The issue is, do the
04:26:41 Intel and Qualcomm chips use the five patents?
04:26:45 Ms. Dwyer could have looked at chips but didn't,
04:26:52 not one, not a single line of source code, not a single
04:26:56 chip in the case. She never looked at a one. So her
04:27:01 opinions have utterly nothing to do about with whether the
04:27:06 chips in the case actually use these five patents.
04:27:09 Now, finally, we have Mr. Blasius. Now, he
04:27:11 couldn't look at the chips. They're confidential.
04:27:14 Ms. Dwyer could, but he couldn't. But he could certainly
04:27:16 look at the patents, and he didn't do that either.

So the witnesses they offered you are right here. The only folks who both looked at the patents and looked at the chips are Dr. Madisetti and Dr. Mahon.

Now, let's talk about the evidence that we presented, and I want to put a special spotlight on Dr. Josiam and Mr. Ramaprasad. They're the folks who actually helped to create the chips, they wrote the source code on those chips.

Now, you've heard over the course of this trial a bit of a dispute as to whether our experts, Dr. Buehrer, Dr. Wells, Mr. Lanning, properly reviewed the source code. And I want to say two things about that.

First, the Plaintiffs had retained an expert named Mr. Jones to analyze the source code, and you heard some references to him over the course of the trial.

He, as you heard from Dr. Wells, agreed with our experts on how the code worked. As Dr. Wells said, Mr. Jones agreed with him, agreed with him.

But more than that, and this is the second point, who could better explain how the code works than the folks who wrote it? That's why we brought them to trial so you could hear firsthand from the folks that wrote the code and created the chips about how it works.

And Dr. Josiam and Mr. Ramaprasad were not cross-examined on the precise details of the source code by

04:28:42 the Plaintiffs. If they had quibbles with how they were
04:28:46 explaining the code, they should have asked them. They
04:28:49 should have asked them.
04:28:50 We brought you the folks who had the first-hand
04:28:57 knowledge of how that code works, and they explained it to
04:29:01 you step-by-step.
04:29:04 So what did they tell you and how does it fit into
04:29:04 this case? Well, the key legal issue is the claims, not
04:29:06 the rest of these patents. We certainly want to look at
04:29:08 the rest of these patents. But the claims mark out the
04:29:11 fence line, mark out the boundaries that are important.
04:29:14 This is what His Honor told you. The claims
04:29:17 define the patent owner's rights under the law. The claims
04:29:21 are important, because it is the words of the claims
04:29:24 themselves that define what the patent covers. His Honor
04:29:27 told you that in the jury instructions he provided to you.
04:29:30 And Dr. Madisetti recognized that. He said only
04:29:34 the claims matter because claims are what describe and
04:29:37 limit the invention.
04:29:39 So let's go through it piece-by-piece.
04:29:41 '332 patent, here's the claim. And the claim
04:29:46 language that's most significant for the issues you need to
04:29:48 decide is highlighted.
04:29:49 A modulo C operation wherein 'C' is defined as
04:29:57 floor(N/L). It's a mathematical equation. It's a

requirement. To infringe this claim, you need to infringe that requirement.

So the question is, do the chips have it? And the answer is they don't.

Mr. Ramaprasad came up with a better, simpler, and more efficient approach. What he did is use a shift function, and this shift function takes one step to do what the equation in the '332 patent requires many steps. The equation in the '332 patent is actually an old equation.

And you don't need to take it from me. You can take it from the inventor, Dae Won Lee. This is the email that you've seen in this case where he wrote to the European Telecommunications Standards Institute. And he said: I guess what we are proposing is nothing new really. What we are proposing to use what is well-known equation.

Remember when Mr. Summersgill held up that textbook from the 1980s during his examination of Mr. Lanning. It had that equation in it. It's an old equation, and it didn't work as well as the new approach that Mr. Ramaprasad came up with.

Now, Dr. Madisetti said, well, Dr. Lee was just being modest, but it turned out he never asked him what he meant. He never called him or emailed him to find out what Dr. Lee meant by that email. And the truth is he wasn't being modest. He was being honest when he said it's

04:31:23 nothing new really.

04:31:27 Mr. Ramaprasad described the advantages of his
04:31:30 approach. A shift calculation does something in one step
04:31:34 compared to any other operation, which could take multiples
04:31:37 or tens of steps.

04:31:38 And you saw in this demonstrative how that works.
04:31:41 The shift does one step to arrive at the answer. Meanwhile
04:31:46 floor(N/L) is still going, it takes 11 steps.

04:31:49 Now, the reason why that's important is because in
04:31:56 computer chips you want to do things as efficiently as you
04:31:59 possibly can. And when you have an equation that does it
04:32:01 in one step, that's different and that's better. And
04:32:05 Dr. Madisetti, when he was cross-examined by
04:32:08 Mr. Summersgill, Mr. Summersgill asked: We can agree that
04:32:11 code that is faster and requires fewer steps, even if it
04:32:14 gets the same answer, is better than code that's slower and
04:32:18 requires more steps?

04:32:19 Dr. Madisetti couldn't provide an answer, he
04:32:22 couldn't provide a yes-or-no answer. And the truth is he
04:32:25 couldn't provide any good answer. It's obvious that a
04:32:26 faster, more efficient approach is better, and that's what
04:32:29 Mr. Ramaprasad came up with. It's different and better
04:32:32 than the '332 patent.

04:32:33 Let's go to the '833. And, again, we start as we
04:32:36 must with the claim language. Here, the claim language

talks about multiplexed signals that are mapped from the first column of the first row to the last column of the first row, the first column of the second row to the last column of the second row, and so on.

Well, you know what that means. It's describing a mapping process where you move from left to right across the row, left to right across the second row, and so on.

Dr. Josiam explained that the chips that he helped create do it different. They do a column-by-column method where you map from the top to the bottom of a column.

Here's the difference. On the left, you have the patent, you're mapping from left to right, row-by-row. Now, it's true you go through columns on your way across the row, but you're still going across the row left to right.

It's like when you go to a movie theater, and you go into your row, you're not going down a column, you're going across a row. That's exactly the same thing here. You're moving from left to right across the row, left to right across the row.

Now, those Post-it notes actually came from Mr. Pollinger, one of the Plaintiffs' attorneys, when he was redirecting Dr. Madisetti. And I think they were trying to show something about the left-hand side of this diagram.

But here's the thing, the left-hand side of the diagram is the patent. The right-hand side are the shifts at issue in this case, top to bottom, down the column. They didn't even touch the right-hand side because it's different. That's a very different approach.

And you can see the benefits. This is the bus analogy. In the patent approach where you work across the rows, it takes longer to fill up each of the buses.

In the Intel and Qualcomm approach where they work down the column from top to bottom, once that bus is full, it goes. It doesn't have to wait for the others to get filled up, as well. It's a faster and more efficient approach, and it's fundamentally different than the row-by-row approach of the '833 patent.

Now, Dr. Madisetti was a bit all over the place on this. In his expert report before trial, he distinguished between mapping signals row-by-row and mapping signals column-by-column. He admitted that, although he tried to say he was using Dr. Wells, but it was his report. And then at trial, when asked to concede that row-by-row mapping is different from column-by-column, he said, I disagree.

Well, it is, it's a fundamentally different approach.

The one on the right, top to bottom is more

efficient and fundamentally a faster way to do it than the one on the left.

So let's move to the '557. And, again, we start as we must with the claim language. The claim language that's most critical from this patent is selecting a sequence from a plurality, which means more than one, of sequences contained in one group of a plurality of groups into which a pre-determined number of sequences that are generated from a plurality of base sequences. So we're talking about generating sequences and a plurality of sequences.

And the same language or similar language appears in the other asserted claim, Claim 10.

Now, Dr. Josiam explained how the chips work. The chips generate one sequence, just one, at the time they need it, as opposed to a plurality of sequences. Generating just one when you need it is a better approach because you're not occupying more space from having multiple sequences. You only have one, you use it when you need it.

Now, Dr. Madisetti conceded that he had not shown you, the ladies and gentlemen of the jury, the hardware source code for sequence generation. He didn't show you the code that's relevant in this portion of the chips for generating these sequences.

04:36:28 Now, Mr. Lanning was asked if that matters, and he
04:36:31 said, it sure matters to me, and it would matter to anyone
04:36:34 else that truly wanted to understand the way the baseband
04:36:39 chips operate.
04:36:40 Again, if you don't review the hardware, you don't
04:36:41 know of -- anything about this specialized hardware
04:36:45 sequence generator.
04:36:46 Now, on cross-examination when Mr. Summersgill was
04:36:50 questioning Dr. Madisetti about this patent, at one point,
04:36:54 Mr. Summersgill said: So we can agree that the claim
04:36:56 requires, quote, sequences that are generated from a
04:37:00 plurality of base sequences, right?
04:37:00 Now, Mr. Summersgill was literally just reading
04:37:03 the claim language, reading it. And he said, we can at
04:37:07 least agree on what the words say.
04:37:10 Dr. Madisetti said: I disagree. I disagree.
04:37:13 Now, eventually he conceded the English language
04:37:18 is present in that limitation. But that's not just the
04:37:21 English language, that's the requirement. We are bound by
04:37:24 what the claims say. Those set the property line for the
04:37:27 patents. We have to go with what the claims say. And you
04:37:30 can't disagree with what they say to try to create an
04:37:33 infringement theory.
04:37:34 Now, Dr. Madisetti also said one other thing over
04:37:37 the course of his testimony about this patent. He actually

said: Increasing and decreasing mean the same thing.

Now, of course, they don't. They don't. They mean the opposite. But it's another example of how far he had to stretch to come up with an infringement theory for this patent. It just doesn't hold together. One sequence is not the same as a plurality of sequences.

Let's go to the '774. Now, again, we start with the claim language. This is a method claim, and it requires receiving a processing parameter, and here the receiving is being done by a mobile device. It's receiving it from a base station, one of those big antennas. So the mobile device has to receive the processing parameter as part of a method, which means a process for doing it.

So the question is: Do they do it, the Apple products and the Intel and Qualcomm chips inside those products?

And Dr. Wells explained they don't. The Apple products actually work as they go through a five-step procedure to compute the processing parameter. They build it. They construct the processing parameter themselves at the device instead of receiving it from the base station. It's a very different way of doing it.

You can either receive it from somebody else creating it for you, or you can construct it yourself, and the way the Apple devices work and the chips in those

devices work is they construct it themselves.

Now, as he explained in the other steps inside those chips, Steps 1, 2, 3, and 4, there's no processing parameter. It's not until the end.

Now, why is that meaningful? Well, it's meaningful because within those five steps, the Apple products are receiving different ingredients of information which they use to construct the processing parameter.

And as Dr. Wells explained using the Legos analogy, you can take that information and build or construct the processing parameter. It might be, by analogy, this house here or something else, a tree, a horse.

This is an illustration of different types of functionality you can build with the same information, and that's the benefit of doing it yourself, instead of receiving it from someone else.

If you receive it from someone else, you just have the processing parameter. If you build it using different ingredients, you can take those same ingredients, like you take Lego blocks, and turn them into something else.

That's how the Apple products work. It's a more flexible approach than the patent claims.

Now, Dr. Mahon, at the end of the day on Friday, I asked him: Does receiving mean the same thing as

constructed?

Answer: Does receiving mean the same thing as constructing? No.

And it doesn't. Of course, it doesn't. And that's the end of the story for this patent. It's a fundamentally different way of doing it. The Apple products construct it, instead of receiving the processing parameter.

And that takes us to the last patent, the '284. And, again, we start as we must with the claims. The claims require a first subset of values containing more values than the second subset of values.

Now, let's be clear on what this means. The first subset is reserved for indicating the transport format. That's number one.

And the second subset is reserved for indicating the redundancy version. Those are the two things.

The first subset is reserved for indicating the transport format.

The second subset is reserved for the redundancy version.

Now, if we go to -- and you see the same language in Claim 14.

If we go to -- and Claim 27, which incorporates Claim 14 by reference. It has all those requirements, as

well.

What is accused here is a table in the LTE standard, and there's no dispute that the chips -- the Qualcomm and Intel chips use that table.

So the question is, do they contain a first subset and a second subset of values? And most importantly, is the first subset bigger than the second subset, because that's what the patents require? And the answer is, no.

If you look at this, the first subset is right here. And if you count them up, there's 29 values.

The second subset is right here, and there's 32 values.

So in the actual products, there's more values in the second subset than the first subset is the opposite of what the patent is describing.

Now, what is the benefit of doing it the way the chips do it? They always send a redundancy version. All those 0s represent actual redundancy versions. And by having redundancy, it helps ensure the messages get through.

Remember the "hello" example? Hello, hello, in case a lightning strike knocked out one of the hellos. By always having a redundancy version, this table approach is better than only sometimes having a redundancy version.

Now, what they have tried to do in this case, and

you saw it again just now, is to compare a table in the patent, Table 3, to the standard, and say they're the same thing.

Well, they're not. They're not. And no matter how much they color-code these tables and try to modify them to make them look similar, they're not the same. They're not the same table. And if you look at them, you'll see that immediately.

The second thing is this: We are bound by the claims. The claim language governs whether there's infringement or not. And the claim language does not include -- the claim language does not include their description of the table.

Mr. Sheasby just now said the reason why that Table 3 is significant in the patent is that the values change at some point down towards the bottom, and that, therefore, we should focus drawing the boxes around the changed sections.

Well, if you look at the claim language, you will not see any reference to changed values. You just won't see it. What you will see is a reference to one set of values for indicating transport format, one set of values for indicating redundancy.

And if you take the claim language, the claim language, not their modified tables, take the claim

language and apply to the LTE standard, it doesn't fit.

The LTE standard does exactly the opposite. Rather than having a first subset bigger than a second subset, it has a second subset bigger than a first subset. It's the opposite approach. There's no infringement.

And, again, remember His Honor instructed you the claims, the claims, the claims are important, because it is the words of the claims themselves that define what the patent covers.

Now, Dr. Josiam, again, explained that 29 were used for transport block size, 32 were used for redundancy. So the person who actually wrote the code created the chips, confirmed that we're drawing the boxes correctly.

And Dr. Mahon on Friday afternoon confirmed, as he must, that the value 32 is bigger than the value of 29, and, therefore, there's no infringement for this patent either.

So when Mr. Blevins said our position is we clearly do not infringe, he was right. If you take the language of the claims and compare them to the chips, the actual chips and how they work, as explained by folks who helped create them, they don't fit. They just don't fit. There's no infringement, and there never was.

Now, I want to say just a few words about invalidity. And at the beginning of this case, Mr. Baxter

gave you an analogy to cutting down trees on someone else's land. You now know that Apple has never done any such thing.

What they did in this case is plant trees, create their own products using chips from Intel and Qualcomm on their own land. And what happened in this case is the Plaintiffs are trying to move their fence line -- ignore the claim language and move their fence line into Apple's land to capture Apple's trees. And that's not right.

You've got to keep the fence line exactly where it is. You can't change the claims and stretch them out to try to capture someone else's property. It's just not right.

But there's another problem. If you let them stretch the claims out in the way that they're trying to do, they cover old ideas, as well. All of that work that was done in the field in the decades and decades before these patents were filed -- and you see some of it here on the screen -- that work could be covered, as well, if you let them stretch out the claims.

So here is what we are asking you now. Hold them faithful to the lines that are in those patents. And if you do, there's no infringement. And if you find no infringement, you will see in the verdict form your work is done.

If you check "no" for no infringement, you don't have to answer any other questions on the verdict form. And if you hold them true to your -- to the positions in the claims, that's the only right answer. There's no infringement. Your work is done.

And to be very clear, in that circumstance, we don't want you to reach invalidity, and you don't have to. But if you let them stretch the claims out to cover Apple's chips or Apple's products and the Intel/Qualcomm chips within those products, then you do have to address invalidity, because at that point, the claims would have been stretched so far that they cover the old work of others. And you're going to have to get into invalidity.

But if you hold them true to the proper boundaries and find no infringement, your work is done.

Now, over the course of this case, you've heard a number of distractions by the Plaintiffs. I'm going to go through four.

First, essentiality. Now, they've mentioned a few times the expert that we retained in this case, Mr. Rodermund, and suggested that he was somehow saying we were using these patents. He said nothing of the sort. You were never shown a word that suggests that.

But I want to show you some testimony that you were shown. And here's what he said, quote, so a device --

04:47:16 certain devices definitely does not have to implement all
04:47:20 of the essential patents which are in the LTE standard.
04:47:23 Think about that. Mr. Rodermund, who they're
04:47:25 telling you to rely on, said: Certain devices definitely
04:47:25 does not have to implement all essential patents which are
04:47:25 in the LTE standard.
04:47:32 Ms. Dwyer's opinion on whether these patents are
04:47:35 essential is candidly beside the point. She didn't look at
04:47:38 the chips. The only way to see if the patents are actually
04:47:41 being used in the chips is to look at the chips.
04:47:44 Dr. Josiam explained to you why being essential is
04:47:46 not enough to prove infringement. The standard tells you
04:47:50 what the chip needs to do. But the engineers -- folks like
04:47:54 Dr. Josiam and Mr. Ramaprasad -- figure out how to do it.
04:47:57 They -- they design the circuits that actually accomplish
04:48:01 what the standard is trying to achieve. And there's a
04:48:05 whole bunch of different ways to do it.
04:48:07 If the standard says get to Houston, you figure
04:48:10 out, do you walk, take a bike, drive? There's a whole
04:48:14 bunch of ways to travel. The same thing here. The
04:48:16 standard sets up the objective. The chip engineers figure
04:48:20 out actually how to do it. And the way they do it is
04:48:23 reflected in the chip. So to figure out if the chip
04:48:25 infringes, you have to look at the chip.
04:48:27 Dr. Mahon, I asked him: We need to understand how

04:48:32 the Qualcomm and Intel chips work -- for his infringement
04:48:36 theory. And he acknowledged: To have insight into my
04:48:39 infringement theory, yes. He was right. You have to look
04:48:41 at the chips to figure out if there's actual use of the
04:48:43 patents. You can't just call them essential and leave it
04:48:45 at that. You have to actually focus on the chips.
04:48:49 When we talked about under the hood, that was a
04:48:51 phrase that Ms. Smith used at the beginning of the trial,
04:48:51 this is what we meant. Look at the chips.
04:48:53 Ms. Dwyer: You never checked the Qualcomm or the
04:48:57 Intel chips to see if they actually use the five patents in
04:49:00 this case, did you?
04:49:01 Answer: No, I didn't.
04:49:03 No. 2, Innography, this database. Now, they've
04:49:07 shown you a few times this testimony from Ms. Mewes, the
04:49:10 Apple licensing attorney. But I want to focus you on what
04:49:14 she actually said. She actually said that she accessed
04:49:16 this database in 2018 to identify what portion -- what
04:49:21 number of declared patents are owned by PanOptis and its
04:49:26 affiliates. She never said, I looked at the '774 patent or
04:49:30 the '284 patent or any one of these patents. And she
04:49:34 certainly never said she looked at these strength ratings.
04:49:37 And it would be crazy if she did. You know how
04:49:37 those strength ratings work. Ms. Dwyer explained it to
04:49:40 you. The strength rating will rise simply because a patent

has been asserted in litigation. And it doesn't even matter if the person who it's being asserted against doesn't use it.

You can sue someone for not using a patent -- not using a patent, and your strength rating is going to go up. It's the craziest thing. It's an incentive for bad behavior where you sue someone who is not infringing, your strength rating goes up, and then you point to the strength rating as evidence of it being a good patent. It has nothing to do with it being a good patent.

There's not a shred of evidence that Ms. Mewes or anyone else ever looked at those strength ratings. It's total red herring.

No. 3, paid experts. We've heard references to paid expert. And there's an old expression which we've all heard, people in glass houses shouldn't throw rocks. We've got right here a whole row of paid experts.

Dr. Mahon is a paid expert. And there's nothing wrong with that. In litigation, folks who get retained as experts, quite naturally, expect to be paid for the work that they do. That's what they are. They're paid experts.

The only person they called as a witness to the stand who wasn't a paid expert was Mr. Blasius right here. And not just that. I don't know if they thought we'd forget, but Dr. Madisetti, out of all the technical

experts, has been paid the most for Apple cases. He's been paid close to a million dollars in cases testifying opposed to Apple over a decade period.

Mr. Kennedy and Dr. Reed-Arthurs work at a place called Berkeley Research Group. That's billed over $4 million for work against Apple.

So, again, we didn't come here to sling mud or throw rocks, but if you're going to criticize Dr. Buehrer, Dr. Wells, and Mr. Lanning for being paid experts, you really got to look in the mirror and take a look at the folks who testified as witnesses for them in this case. They only called one fact witness.

In contrast, we put on the stand Mr. Blevins and also the folks who created the chips. They're not paid experts. They're folks who created the source code, Dr. Josiam, Mr. Ramaprasad. They came and testified and told you the truth about the facts that they knew.

And one last point about the experts, there's been some talk about how our experts didn't contest these testing numbers, the performance testing. There's nothing to test. The products don't use the five patents.

The premise of the testing is that the chips in the Apple products actually use these five patents. They don't. They've never used them, so there's nothing to test.

04:52:05 And that takes me to the last distraction, which
04:52:09 is the Qualcomm/Apple relationship. And you've been shown
04:52:12 some documents relating to that relationship, which is a
04:52:14 complicated relationship. Apple has received chips from
04:52:18 Qualcomm over the years, but Qualcomm has an unusual
04:52:20 business policy that require that you take a license to
04:52:23 their patent portfolio before they will sell you chips.
04:52:26 It's like if you went to an appliance store to buy
04:52:30 an oven, and they said, well, before we will even show you
04:52:33 the oven, you have to take a license to pay us a royalty
04:52:37 every time you cook on it. Or if you went to buy a car and
04:52:39 the car salesman said, you're going to have to pay me a
04:52:43 royalty every time you drive it. Before I sell you the
04:52:47 car, you're going to have to sign a license.
04:52:50 It's a very unusual policy. As Mr. Blevins said,
04:52:51 he didn't even know what they were talking about the first
04:52:51 time he heard about this. It was totally foreign to him.
04:52:55 And it's led to some disputes between the companies.
04:52:57 Here's the thing, it has nothing to do with this
04:52:59 case, absolutely nothing to do with this case. It's a
04:53:02 distraction and a sideshow meant to get you to take your
04:53:08 eye off the ball.
04:53:09 Don't take your eye off the ball. What matters in
04:53:09 this case are the claims in the five patents and whether or
04:53:12 not they apply to the chips at issue. That's it. The rest

of this stuff is distractions and red herrings.

And it's in the service of a damages request for half a billion dollars for one year.

Now, you saw how absurd that is when you look at real-world data, and it's absurd for a couple reasons.

One, remember when Ms. Smith drew the chart with Mr. Perryman that compared the Qualcomm/Apple deal, the Intel/Apple deal and what they were requesting, the Plaintiffs in this case.

I can't go through all the numbers right now because some of it is confidential, and we'd have to seal the courtroom. But for Intel, for Intel, you know that Apple got an entire business, and most importantly 2000 talented engineers like Dr. Josiam and Mr. Ramaprasad joined the company, joined the company.

In addition, they got thousands and thousands of patents, including cellular and LTE patents, all of that for about double what the Plaintiffs are seeking in this case for five patents for one year. Just think about that. They're seeking for five patents for one year half as much as Apple paid for an entire business with thousands of engineers and thousands of patents. It makes no sense whatsoever.

And you know that there's hundreds of thousands of patents in this area of technology. So to establish that

these patents had that type of value, you would truly have to consider them the golden eggs, the golden eggs as compared to garden variety patents in this area.

Dr. Perryman said if that were true, there would be some buzz about them. And, of course, that's got to be right. If these were really worth the kind of money Plaintiffs are seeking, folks in the industry would have heard about these patents.

Mr. Blasius, LG did not give them any special significance in the agreement with Plaintiffs, the '833 and the '332. Panasonic, same thing, no special significance to the two Panasonic patents in this case. Samsung, '774, no special significance to that patent, no buzz, even with respect to the original owners.

Well, what about the former head of licensing of the Plaintiffs? If anyone would know, if anyone would know that these are valuable patents, that these are the golden eggs, these have buzz about them, it'd be the head of licensing for the company. He hadn't even heard of them. He said, I just don't recollect any knowledge across the boards on these specific patents.

THE COURT: Six minutes remaining.

MR. MUELLER: Thank you, Your Honor.

I'm not familiar with the patents, nor do I recollect any specific information with respect to the

04:55:47 improvements on these patents.

04:55:49 So just think about that for a minute. We've got
04:55:53 Mr. Blasius who hasn't even read them, and then we've got
04:55:56 the former head of licensing for this company who hadn't
04:55:59 heard of them, couldn't identify any improvements for these
04:56:03 patents.

04:56:07 Now, if you truly own something that was worth
04:56:09 half a billion dollars for one-year's use, you could be
04:56:13 assured that the head of licensing would have heard about
04:56:16 it. You could be assured that Mr. Blasius would have read
04:56:20 them.

04:56:20 And the fact is, the original owners never said
04:56:23 one word about these patents being special. The head of
04:56:26 licensing never said one word about these being special.
04:56:30 And the CEO, by contract of these five companies, hadn't
04:56:34 even read them, hadn't even read them. There is no
04:56:38 indication that these patents are worth anything to
04:56:41 anybody.

04:56:42 And you can see it in what happened with their
04:56:44 licensing efforts. The Plaintiffs have reached out to
04:56:47 company after company after company that makes various
04:56:50 types of cellular products, sometimes it's phones,
04:56:53 sometimes it's other things. Walmart, for example,
04:56:55 remember, I showed you that Walmart phone, and on and on
04:56:58 and on. This is from the cross-examination that I did of

Mr. Blasius.

He acknowledged it's a long list, a large list of companies that they've approached.

And the vast majority of the companies that you've approached have not taken a license, correct?

He acknowledged the answer was: Yes.

Now, in the opening statement, the representation was made that they're licensed by essentially every other major LTE phone manufacturer in the United States. Now, you've seen that, that's referring in part to the original owners like Samsung and LG.

So those are a bit of a different category. They were the original owners of the patents. But in terms of other companies that have been approached, you know who signed up as licenses, they were companies that barely sell phones in the U.S.

And when I asked Mr. Blasius the following: Sir, fair to say a very significant number of major phone manufacturers do not -- have not taken a license to these patents, correct?

His answer was: That is correct.

And they were right not to take a license to these five patents. They're not useful for modern phones like the Apple products and the Intel chips and the Qualcomm chips within those products. They just don't use these

types of patents. They're outdated technologies. These are the most furtherest thing possible from the golden eggs.

Now, Mr. Perryman described how if someone somewhere wanted to take a license to these patents what they would consider. And as he put it, you'd have to consider the fact that there's hundreds of thousands of patents in this area, and if you pay one person an outlandish royalty, you're going to have folks knocking on your door every day.

THE COURT: Three minutes remaining.

MR. MUELLER: Thank you, Your Honor.

So as, he explained to you, a fair lump-sum royalty for these six would be in the neighborhood of $6 million if you were using them, but Apple is not. They're not using these patents, and they never have. So the right damages number for Apple is zero.

Now, this is the end of my time with you, it's the last few things I get a chance to say. You're going to hear more for the Plaintiffs just now, and I won't have a chance to respond. So I'm going to ask you to do a couple things for me as you listen to these arguments.

First, if you hear a brand new point or brand new argument that I don't have a chance to respond to, ask yourself why are you hearing this now at the end of the

trial when Apple doesn't have a chance to respond?

Second, for any argument that's made, I'd like you to ask, what would Ms. Smith point me to in terms of evidence or what would Mr. Summersgill point me to or what would I point you to? What evidence would we show you to demonstrate the argument is wrong? You know the evidence now and have in mind what it actually shows.

And the third and most important thing is, I'd like you to think about whether these arguments help you answer the critical questions before you. Do the claims cover these chips? How can it be that 32 is greater than 29? How can it be that a row-by-row mapping patent covers column-by-column? How can it be that a shift operation would satisfy a requirement for an old, outdated equation? How can it be that one sequence is the same as a plurality of sequences. And how can be it that constructing a parameter is different -- the same as receiving? There's no good answers to those questions because the facts don't support them.

At the end of this case Mr. Blasius is asking you to cut him a check for a half billion dollars for him and his five companies based on five patents that he never read and Apple never used. It's just not right. The right answer, the right result, the true result, the just result in this case is no infringement.

I respectfully request that you return a verdict in favor of Apple. And I thank you for your time.

THE COURT: All right. Let's take the demonstrative down, and then we'll proceed with Plaintiffs' final closing argument.

Mr. Sheasby, you have 21 minutes and 25 seconds remaining. Would you like some warning on your time?

MR. SHEASBY: Yes, Your Honor. If I could have warnings at 10 minutes and 4 minutes, I would be grateful.

THE COURT: You may proceed, counsel.

MR. SHEASBY: Legos, school buses, cup holders, basketballs, ways of getting to Marshall. Counsel for Apple just spoke for 45 minutes. He did not show you one line of source code. He did not show you one internal Qualcomm or Intel or Apple document defending their positions. It's an insult to us and this process.

We don't need to hear about Legos, we need to see the evidence. The lines of source code that we presented to you in our closing, the lines of source code and technical evidence that Apple utterly ignored for the last 45 minutes.

Can I have Slide 30, Mr. Huynh?

Apple kept saying: We do it differently. We do it differently. We do it differently. Well, you think if they did something different than the standards, they would

have filed a patent on it because that's what companies do when they seek important -- when they create important things. They file patents.

Did Mr. -- Dr. Josiam and Mr. Ramaprasad say that they filed one patent on their, quote, different way of doing something? Of course, they didn't, because there is no different way.

Did Dr. -- Dr. Josiam and Mr. Ramaprasad ever say they didn't infringe? Of course, they didn't, because there is nothing other than practicing the standards.

Let's have Slide 149.

Apple practices the LTE standard. Its experts, who've testified 24 times on behalf of Apple, played word games. Mr. Rodermund admitted it. That's why Ms. Dwyer's testimony is so important. They practice the standard.

Ms. Dwyer has established that the patents are essential to the standard. Mr. Blevins has admitted that these specific elements that these patents cover are, quote, necessary for communications. That's why Ms. Dwyer's testimony is so important. It's why it's an independent basis to find infringement.

Let's go to Slide 32, Mr. Huynh.

We're going to talk about the '774 just briefly.

Slide 36.

Jonathan Wells testified under oath, I'm not a

source code guy. Why would they present someone as an expert witness to you who's, quote, not a source code guy?

The reason is because the source code shows

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Why aren't they showing you the source code? Why aren't they showing you the actual technical documents? It's because there is no meaningful defense to infringement.

Let's go to the '833 patent -- '332 patent. Can we have Slide 41, Mr. Huynh.

A shift is different from a divide. A shift is different from a divide. That is only true in one universe of Apple's lawyers. Even their own experts who testified time and time and time for Apple could not defend what is frankly an absurd position. A shift is a divide.

Apple didn't invent anything new. We know that. There's no Apple patent on their new way of dividing. It doesn't exist.

Let's go to Slide 46, Mr. Huynh.

The column-by-column analysis of the '883 [sic] patent.

Let's go to Slide 53.

Mr. Wells took such extreme positions that he -- he claimed that Qualcomm's own processor doesn't work the way their internal documents say.

One of the most powerful tools that you have available to yourselves is common sense. It's actually in the Judge's instructions to you, that you are empowered to use common sense. Think about it.

They paid some guy to come here and tell you that Qualcomm chips don't work the way Qualcomm's documents say they work. Is there any common sense associated with that?

Why does he say it? Because he's not a source code guy.

Let's go to Slide 86.

I'm particularly disturbed by this slide that was shown to you in which Dr. Madisetti is distinguishing between -- they claim Dr. Madisetti is distinguishing between row-by-row and column-by-column mapping.

The reason why I'm disturbed by it is because they cut off the first half of his testimony where he was saying -- he was explaining what Dr. Wells's position was.

This type of gamesmanship, we don't know what you mean by practice, cutting off experts' answers halfway through their questioning. It's an insult. It's an insult to Professor Madisetti, and it's an insult to this process.

Let's go to the '284 patent -- sorry, the '557

patent, Slide 70.

This idea that you can't create individual sequences is nothing more than Apple trying to write language into the claims. It has no connection to the claim language, and it has no connection to the specification. The specification expressly states -- expressly states that you can create sequences one at a time.

In fact, the specification shows this process of using codes to create sequences one at a time.

Let's go to Slide 73.

Why are we talking about this Innography database? It's because it's Apple's. It's because they pay money to use it. And now they're trying to throw shade at it. It's their database. They accessed it in 2018. And it shows millions and millions of these patents, how high the score is. This isn't our database. It's not Ms. Dwyer's database. It's their database.

Use your common sense. If this wasn't powerful evidence, why would Apple -- a company like Apple use the database?

They use the database because it's a good database. And the database shows that these patents are incredibly important. And for them to get up here and throw shade at their own documents, their own internal

05:09:19 processors, is an insult to this process.

05:09:21 Let's go to Slide 76.

05:09:23 Apple has a plan. It's a plan they use with
05:09:33 companies that hold standard essential patents. Qualcomm
05:09:36 said: We have 20 patents, look at them, Apple. Apple
05:09:41 said: We don't infringe them. Apple turned to them, just
05:09:44 like Mr. Blevins turned to you, and say: We do not
05:09:48 infringe these patents, trust us.

05:09:50 During those years and years of disputes, Apple
05:09:53 could delay paying Qualcomm what is owed to it. And what
05:09:59 happened in the end? This slide shows what happened in the
05:10:02 end. Apple made a massive payment because when Apple says
05:10:06 they don't infringe, it's part of a plan. It's part of a
05:10:10 game to delay.

05:10:14 Dr. Kennedy -- Mr. -- Mr. Kennedy testified to it
05:10:19 expressly. Their plan is to delay payments. Their plan is
05:10:24 to delay as long as possible the consequences of their
05:10:26 actions.

05:10:29 Mr. Blasius testified that 60 percent -- over 60
05:10:35 percent of the worldwide market has licensed our patents.
05:10:42 Mr. Blasius, who is not an engineer but cared so deeply
05:10:44 about this case, that he sat and had Professors Mahon and
05:10:51 Professor Madisetti teach him the technology so that he can
05:10:54 understand it, and Apple is insulting him because he could
05:10:59 not read it himself, and he needed help.

He testified he spent 24 hours learning this technology, and he explained to you what its purpose was, because he cared so deeply.

Apple's claim that the industry is not licensed to this technology, LG, Samsung, ZTE, HTC, Huawei, they're all licensed. The one who is not licensed is Apple.

And the suggestion that there's no plan to destroy our business, we asked Mr. Blevins a very simple question: If you have a business and your customer takes your products or takes your labor and then doesn't pay 50 percent of the time, what happens to your business? You go bankrupt.

Apple's tactic of delay and fight and fight and fight is designed to destroy our business because this is what our business is, to protect the innovations of LG, Samsung, and Panasonic.

Can I have Slide 70 -- can I have Slide 87?

Apple doesn't even have the courtesy or the respect for this process to go through an element-by-element analysis to present its invalidity claims. Who does? The people who don't even have the burden. Professor Madisetti and Professor Mahon spent time pointing out to you each limitation that was not present in the claims. They did it because they care, and they're committed to this process.

05:12:43 Apple paid three experts to come, and they didn't
05:12:46 even have enough respect for the process of pointing out
05:12:49 where each limitation was.
05:12:51 Let's go to Slide 90, Mr. Huynh.
05:12:57 THE COURT: You have 10 minutes remaining.
05:13:01 MR. SHEASBY: There is only one expert in this
05:13:05 case who has any experience with licensing. That's
05:13:10 Mr. Kennedy. Why does that matter? It's because it's a
05:13:13 hypothetical negotiation. It's a license negotiation.
05:13:19 Dr. Kennedy [sic] is a fine economics professor,
05:13:22 but he is not a license negotiator. He is not a survey
05:13:26 expert. Apple failed him. Apple didn't give him any of
05:13:30 the tools that you need to conduct a license analysis.
05:13:36 They didn't give him any technical analysis. They didn't
05:13:39 give him any licensing expertise. They didn't give him any
05:13:43 survey expertise. They failed him. Why? Because of a
05:13:48 lack of respect for the process.
05:13:50 Let's go to Slide 92, Mr. Huynh.
05:14:01 You will see in Judge's instructions the express
05:14:07 reference to the Georgia-Pacific factors. These are the
05:14:10 factors to consider for damages. These are the factors
05:14:12 that Dr. Perryman utterly ignored. Let me give you an
05:14:19 example.
05:14:19 Factors 1 and 2, the rates paid by licensees for
05:14:24 the use of other patents. Mr. Kennedy, the only license

expert, pointed out that Apple had done a very comparable

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If you follow the Georgia-Pacific factors, if you follow the instructions of His Honor, there is only one conclusion on damages.

Can we have Slide --

Apple said -- they never told you who benefitted from this case. But, of course, we did. Mr. Blasius said expressly under oath that a substantial portion of the revenues are returned to LG, Panasonic -- he said that under oath and expressly.

And why are the revenues returned to them, because in 2008, the year when Apple was still selling a 2G iPhone, Samsung, Panasonic, and LG collectively invested $14 billion in R&D research that led to the LTE standard.

Now, the question you really should ask is, who benefits if Apple gets away with this? That's what we've never heard about.

Let's go to Slide 102, please.

Professors Madisetti and Mahon presented a detailed technical analysis of the performance benefits of these patents. It's the only technical analysis in the record.

Apple's experts were utterly silent. And they could have analyzed the benefits of the feature that is accused of infringement over what came before. Even without conceding whether it was infringing, they could have done that analysis, and they didn't.

Why didn't they do it? Why didn't they respect this process?

Can I have Slide 106, Mr. Huynh?

Apple sold over a hundred million devices solely during this infringement period. That works out to a damages number -- in fact, Apple benefitted $8.00 per iPhone under both of the methodologies presented by Mr. Kennedy, solely from its infringement. That's what its profits was, solely from -- from infringement.

Let's go to Slide 109.

We sat through a week of trial for Apple to try to convince us that people don't care about the speed of their

service, that people don't care about the speed of their phones.

If you walk into an Apple store, they charge you 130 bucks for cellular. And yet we had to sit through a week of people trying to tell us that we don't care about LTE; we don't care about speed. That has no connection to reality.

And the reason why I can say "we" is because a survey of 1400 people was done by Dr. Reed-Arthurs that establishes that fact.

Where is the survey from Apple? Where is the respect?

Let's go to Slide 111.

This is Mr. Perryman admitting that he did no Georgia-Pacific analysis.

Let's go to Slide 114.

This is what the only evidence in the record shows. Performance benefit of 24 percent. A profit per iPhone that Apple makes of $8.00. And overall, $868 million in profits from just over a year of infringement.

THE COURT: Four minutes remaining.

MR. SHEASBY: Let's go to Slide 117 -- actually, let's go to Slide 120.

This is what we respectfully request that the jury

returns. As to -- was there at least one claim of all these patents that were infringed? We respectfully request an answer of "yes."

Did Apple prove by clear and convincing evidence? Now, this is the opposite question. For this, the answer is "no," Apple did not meet its heavy burden of proof. It didn't come close to meeting its heavy burden of proof.

Three, is there evidence of willfulness? We respectfully submit that there is overwhelming evidence of willfulness.

And, four, what's the amount of damages? The only number that is in the record. The Judge's instructions are clear. Mr. -- Dr. Perryman's analysis did not follow the rules. This is the only number in the record.

And whether it was a lump sum or a royalty for past sales, we request the exact same treatment that was

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[redacted] Qualcomm received and a running royalty of $7.50 in the future. We request only a royalty for past sales so that we can be treated exactly the same as Qualcomm only for past damages.

So when I graduated from law school, the president of the university gives a speech, and part of the speech is given every year to every class. And it's be given -- it's been given since 1938. And he says something to the effect

that rules are what makes us free, which was a funny thing when I first heard it, that rules make us free. But they do, right? Rules protect our property. Rules protect our businesses. Rules protect our families.

Apple has made an art of not following the rules. In 2008, when LG, Panasonic, and Samsung were investing $14 billion in building LTE and other technologies, Apple was doing nothing. They just took LTE technology without performing any investigation.

In 2017, Apple did nothing when it was approached by PanOptis. It did no independent investigation. Mr. Blevins testified that he'd only received the patents a few weeks before his deposition. No survey evidence, not a single line of source code or technical document shown to you in closing. No Georgia-Pacific analysis. No analysis performance.

What's the purpose of this? The purpose is to delay payments for as long as possible.

The right to a trial by jury is not just PanOptis's right. It's not Apple's right. It's your right. When you were picked for this jury, you may have said, why me? The answer is, because it's always been you. That's what the founders wanted. It's you who make important decisions. And for as long as this republic exists, it will be you who makes these decisions.

Ladies and gentlemen of the jury, this case, responsibility, is in your hands.

Thank you.

THE COURT: All right. Ladies and gentlemen, I'd like to now give you a few final instructions before you retire to the jury room and begin your deliberations.

You must perform your duty as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion.

All parties expect that you will carefully and impartially consider all the evidence, follow the law as I have given it to you, and reach a just verdict, regardless of the consequences.

Answer each question in the verdict form from the facts as you find them to be, following the instructions that the Court has given you about the law. Again, do not decide who you think should win the case and then answer the questions accordingly.

I remind you, ladies and gentlemen, your answers and your verdict in this case must be unanimous.

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. This is true in patent cases between corporations, partnerships, other business entities and individuals.

A patent owner is entitled to protect his rights under the laws of the United States, and that includes bringing a lawsuit in a United States District Court for money damages based on allegations of infringement.

The law recognizes no distinction among types of parties. All corporations, partnerships, other organizations, and individuals stand equal before the law, regardless of their size, regardless of who owns them, and are to be treated by you as members of this jury equally.

Throughout this trial, I've given you instructions many, many times about not discussing anything about this case among yourselves. When you retire to the jury room in a few minutes, that is going to change.

At that point, not only is it proper for you to discuss this case among yourselves, it becomes your duty to discuss this case among yourselves in an effort to reach unanimous decisions to the questions in the verdict form.

As I've told you, when you retire to the jury room, you're each going to have your own printed copy of these jury instructions that I've given you.

If during your deliberations, you desire to review any of the exhibits, not the demonstratives, but the exhibits which the Court has admitted into evidence, then you should advise me by a written note delivered to the Court Security Officer, who will bring it to me. And in

that event, I will send that exhibit or those exhibits to you.

Once you retire, you should select your foreperson, and then conduct your deliberations.

If you recess during your deliberations, follow all the instructions the Court has given you about your conduct during the course of the trial.

I realize that you will be retiring to deliberate after 5:00 p.m. on this evening. Whether you wish to stay and work later tonight is up to you. Whether you wish to start over in the morning with a fresh start about 8:30 is up to you. I expect that Ms. Clendening will check with you shortly after you retire and see what your wishes are.

After you have reached a unanimous verdict, your foreperson is to fill out the answers to those questions in the verdict form reflecting your unanimous answers.

You are not to reveal your answers until such time as you're discharged unless otherwise directed by me, and you're never to disclose to anyone, not even to me, your numerical division on any question.

Any notes that you've taken over the course of the trial are aids to your memory only. If your memory should differ from your notes, then rely on your memory and not your notes. The notes are not evidence, ladies and gentlemen, and a juror who has not taken notes should rely

on his or her -- his or her own independent recollection and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If you want to communicate with me at any time during your deliberations, you should give a written message or question to the Court Security Officer, written and signed by your foreperson.

The Court Security Officer will then bring it to me. And I will respond to you as promptly as possible, although, I will tell you, it almost always takes me some time to respond.

And I will respond to you either in writing or by having you brought back into the courtroom where I can address you orally. I will always first disclose to the attorneys in the case your question and my intended response before I answer any question you might send me.

After you've reached a verdict and I have discharged you from your duty as jurors in this case, I want you to understand you are not obligated to talk with anyone about your service in the case, but by the same token, once I have discharged you, then you are free, if you choose to, to discuss your service in this case with anyone that you might like to. That choice at that time,

ladies and gentlemen, will be yours and yours alone.

I'm now going to hand eight printed copies of these final jury instructions and one clean copy of the verdict form to the Court Security Officer to deliver to you in the jury room.

Ladies and gentlemen of the jury, you may now retire to the jury room to deliberate. We await your verdict.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Please be seated.

Counsel, I do not intend at 5:30 p.m. to start the bench trial this evening. I plan to start tomorrow morning at 8:30 sharp. You've been allotted three hours to each -- for each side to put on your evidence for the bench trial.

If you wish to reserve any portion of that for a closing argument to me, you need to let me know first thing in the morning.

I suspect that Ms. -- I suspect that Ms. Clendening will check with the jury shortly and ask whether they want her to order dinner for them and whether they intend to stay and deliberate tonight or whether they're going to opt to come back and start in the morning.

You're welcomed to stay and wait until we have some idea whether the jury is going to continue to

deliberate or recess for the evening. Whether they recess for the evening or not, it's clear that the deliberations are going to continue into tomorrow.

While the jury is deliberating and while we're not in the bench trial, you're free to wait here in the courtroom.

You're also free to wait in your respective locations outside of the courthouse, but if you choose not to be here in the courtroom where I can find you in the event there is a note or a question from the jury, then you should make sure my law clerks have a working cell phone number for each trial team where you can be reached and you can quickly return to the courtroom if I need you.

Are there any questions from either Plaintiff or Defendant at this juncture?

MR. SHEASBY: Nothing for Plaintiffs, Your Honor.

THE COURT: Anything from Defendant?

MR. MUELLER: No, Your Honor.

THE COURT: All right. Awaiting either a note or a verdict from the jury and anticipating a start of the bench trial tomorrow morning, we stand in recess.

COURT SECURITY OFFICER: All rise.

MR. SHEASBY: Thank you, Your Honor.

(Recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes _____ 8/10/2020
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
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Expiration Date: 12/31/20